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TELSTRA'S STRUCTURAL SEPARATION UNDERTAKING AND MIGRATION PLAN

SUMMARY: This document explains the key features of Telstra's Structural Separation Undertaking and Migration Plan

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Summary

Telstra's Structural Separation Undertaking (SSU) and Migration Plan will form the regulatory foundation for the most significant restructure of the Australian telecommunications industry since competition was first introduced in the early 1990s. It will also constitute one of the most significant structural reforms of a telecommunications industry driven by a Government anywhere in the world.

The SSU will:

- commit Telstra to structural separation by the "Designated Day";[1] and
- apply a series of robust, effective and appropriate Interim Equivalence and Transparency measures to Telstra's supply of regulated services during the period up to the "Designated Day".

The Migration Plan sets out the process by which retail and wholesale services on Telstra's copper network and broadband services on Telstra's HFC network will be disconnected as the NBN fibre network is rolled out. The Migration Plan also contains the restrictions on future reconnection of premises within the NBN fibre footprint.[2]

Under the new Interim Equivalence and Transparency regime, Telstra is committing to a range of binding and directly enforceable commitments to address concerns expressed by both the industry and the ACCC about the current Operational Separation regime.

Highlights include:

- New price equivalence commitments:
  - a commitment to use management accounts in Telstra's day-to-day decision making to provide transparency that costs are equivalent between retail and wholesale for the same inputs;
  - a commitment to supply wholesale ADSL2+ services at a wholesale price that is determined by taking retailing costs from the BigPond ADSL2+ retail price and updating this wholesale price as Telstra's linked retail prices change; and
  - a commitment to publish reference prices for key wholesale products and to make these prices available to wholesale customers as a standard feature of wholesale contracts.
- A commitment to offer all network level (layer 2) DSL upgrades to wholesale customers at the same time as they are made available to Telstra's retail business units.
- Commitments to equivalence in relation to Telstra's order management and fault rectification processes, including converting the current measurement metrics into service level commitments with automatic payment of rebates for non-performance against those standards.
- Commitments to provide wholesale business support systems that are fit for purpose and reliable (at least 98% uptime), also backed by automatic rebates for non-performance.
- Strict rules about how retail, wholesale and network services business units deal with each other, including controls on retail marketing activities by field staff who support retail and wholesale services.
- Tight information security rules to protect wholesale customer information, including strict protocols on use of individual customer data and limits on the distribution of aggregated wholesale customer information.
- New rules targeting issues that have historically proven problematic, such as access to Telstra's exchange buildings and facilities.

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[1] Currently the Designated Day is 1 July 2018 but it can be extended by the Minister, in which case the SSU commitments will automatically roll forward (see below).

[2] While the Migration Plan's main focus is the copper network, because of its current competitive significance for wholesale customers, the Migration Plan also covers disconnection of Telstra retail services from its HFC network and Telstra's connection of services to the NBN fibre network (see section 4 below).

- Expanding quarterly performance equivalence reporting with new commitments to explain, investigate and resolve the cause of any adverse non-equivalence result (beyond any minimal allowed tolerance).
- A new 'fast track' dispute resolution process to deal with complaints regarding operational equivalence. This includes appointing an ACCC approved independent telecommunications adjudicator (**Adjudicator**) who will have the power to quickly and conclusively resolve non-price equivalence complaints by undertaking 'root cause' analysis of these complaints and to direct Telstra to implement process and system changes.

Telstra's SSU will deliver during the NBN rollout **both** the structural separation of Telstra and robust, effective and appropriate equivalence and transparency:

- **robust** because there are now directly court-enforceable commitments to equivalent processes and ring fencing of functions, staff and information, backed-up by extensive transparency and compliance measures;
- **effective** because wholesale customers will benefit from new commitments on reference pricing, including for wholesale ADSL2+, on DSL upgrade equivalence, payment of automatic rebates for non-equivalence and an expedited, independent dispute resolution process to get non-equivalence processes fixed;
- **appropriate** because these new commitments address the known industry and ACCC concerns with the existing operational separation regime without the huge costs and complexity that functional separation would cause from the bigger picture of successfully implementing structural separation. The Government has repeatedly made clear, as recently as in the Explanatory Memorandum to the SSU Guidance, that Interim Equivalence and Transparency measures are not intended to implement functional separation under a different name.

The Definitive Agreements signed by Telstra and NBN Co, the SSU and Migration Plan will deliver fundamental change in the Australian telecommunications industry. The supply of regulated services on the legacy copper network progressively will be of less significance as the NBN fibre rollout quickly gathers pace and customers (both wholesale and retail) begin to migrate. By facilitating fair and effective competition in the lead-up to NBN migration, the Interim Equivalence and Transparency measures can be a bridge to that transformed environment.

OVERVIEW

On 29 July 2011, Telstra lodged its draft Structural Separation Undertaking and the companion draft Migration Plan with the ACCC. The ACCC will undertake public consultation on both draft instruments and Telstra understands that any ACCC approval will relate to both instruments as a package.

Part 1 of this submission explains the SSU including:

- the commitments Telstra is making to structural separation;
- Telstra's equivalence and transparency commitments during the interim period leading up to structural separation; and
- how these commitments address the matters which the ACCC is required to take into account in considering whether to approve the SSU.

Annex 1 describes the limited exemptions from the staff ring fencing rules which Telstra is seeking from the ACCC in accordance with the SSU Guidance.

Annex 2 provides a detailed analysis of the SSU against the considerations specified in the SSU Guidance.

Part 2 of this submission explains the draft Migration Plan, including:

- Telstra's limited role in its capacity as a wholesale provider on its copper network in the process of customer migration to the NBN fibre network;
- the commitments Telstra is making in its draft Migration Plan; and
- how these commitments satisfy the matters which the ACCC is required to take into account in considering whether to approve the Migration Plan.

Part 1: Telstra’s Structural Separation Undertaking

1. TELSTRA’S COMMITMENT TO STRUCTURALLY SEPARATE

One of the Government’s stated policy objectives for the NBN is to use the migration of customers from the legacy copper network to the NBN as a means of structurally separating Telstra. After the NBN migration is completed all service providers, including Telstra, will primarily use the same underlying structurally separated “wholesale only” fibre network.

Under the legislative regime put in place to facilitate the NBN, the SSU fulfils two roles:

- First, it gives effect to Telstra’s legally enforceable undertaking to be structurally separated by the “Designated Day”; and
- Second, it sets out the various measures which Telstra will put in place over the course of the migration process to provide for transparency and equivalence in Telstra’s supply of regulated services.

In addition, Telstra has also lodged a draft Migration Plan, which is a binding instrument setting out the steps Telstra will take to disconnect services (on both its copper and HFC networks) as part of the migration process. Once accepted by the ACCC, the Migration Plan takes effect as if it were part of the SSU. This means the Migration Plan is subject to the same enforcement mechanism as the SSU, which allows the ACCC to bring proceedings in the Federal Court and for the court to impose significant remedies if Telstra is found to be in breach.

1.1. THE SCOPE OF STRUCTURAL SEPARATION

At the heart of the SSU is clause 5, which sets out Telstra’s enforceable undertaking to structurally separate by the Designated Day (see box 1).

The structural separation commitment is a commitment to cease supplying fixed line carriage services over any networks that Telstra controls, other than those services or networks which have been exempted by the Minister. On 23 June 2011, the Minister for Broadband, Communications and the Digital Economy issued the *Telecommunications (Structural Separation – Networks and Services Exemption) Instrument (No. 1) 2011* (**Networks and Services Exemption**). That exemption requires Telstra to structurally separate in respect of its copper network and its HFC network (other than for Pay TV services), to the extent that these networks are within the NBN fibre footprint as it stands at the Designated Day and are “disconnected” (as is required under Telstra’s agreement with NBN Co).

Box 1: Telstra’s structural separation commitment (clause 5)

(a) Telstra undertakes that, at all times after the Designated Day:

(i) Telstra will not supply Non-Exempt Services to retail customers in Australia using a Non-Exempt Network over which Telstra is in a position to exercise control; and

(ii) Telstra will not be in a position to exercise control of a company that supplies Non-Exempt Services to retail customers in Australia using a Non-Exempt Network over which Telstra is in a position to exercise control.

Telstra’s vertical integration on the copper network and its horizontal integration across copper and HFC access networks have been the long term focus of ACCC and industry concerns. The Explanatory Memorandum to the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* (Cth) (**CCS Act**) (which introduced the SSU amendments) stated

that by giving separation commitments in relation to the copper and HFC networks, Telstra would meet the Government's structural separation objectives (at page 2):

> *"On 20 June 2010 Telstra and NBN Co announced that they had entered into a Financial Heads of Agreement. The implementation of that Agreement will provide for the progressive migration of customer services from Telstra's copper and subscription television cable networks to the new wholesale-only fibre network to be built and operated by NBN Co and would deliver the envisaged structural reform of the telecommunications sector."*

Telstra has a number of network assets and services that are not related to its legacy position including for example its mobile networks, satellite services, Pay TV services (over HFC) and a number of fibre services. Under the Networks and Services Exemption, Telstra will continue to own and operate these networks and services.[3] This also means these networks and services will continue to be subject to any new or existing regulatory regime.

Telstra will also continue to own and operate its copper network outside the NBN fibre footprint. Telstra has entered into an agreement with the Commonwealth Government which requires Telstra to continue to operate and use this residual copper network for a period of 20 years to meet the universal service obligation (**the TUSMA Agreement**). While most of this network will be in rural and remote areas, there may be some premises located within NBN Co fibre serving areas which are not passed by the NBN fibre network and copper will continue to be available at these premises (unless Telstra's agreement with the Commonwealth Government expressly permits Telstra to disconnect those premises, for example, where the copper line is damaged by a natural disaster).[4] Access regulation also will continue to apply to this residual copper network.

1.2. THE DESIGNATED DAY

Under the SSU, the extent of the NBN fibre rollout as at the Designated Day dictates the scope of Telstra's structural separation. This is because Telstra will be obliged to separate to the extent it has not disconnected its copper and HFC networks.

The designated day specified in the CCS Act is 1 July 2018.[5] However, the Minister has power under subsection 577A(10)(b) to specify a later date (and to make one or more further instruments specifying other later dates).

This allows the date to be delayed if NBN Co requires more time to complete its rollout. The Interim Equivalence and Transparency rules (except for the price equivalence provisions, which cannot be otherwise extended beyond 2018 without both Telstra's and the ACCC's agreement) will also be automatically extended to this new date.

While the Migration Plan Principles require the Migration Plan to specify the network which Telstra will have disconnected by the Designated Day, the Migration Plan also continues beyond the Designated Day if NBN Co continues its network rollout beyond that date. A limited number of clauses in the Migration Plan also continue to apply indefinitely (specifically, those dealing with NBN information security and the restrictions on Telstra reactivating its copper and HFC networks).

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[3] As described in Telstra's public announcement of 23 June 2011 about having executed the Definitive Agreements, Telstra has made commitments to NBN Co in those agreements to disconnect certain networks (which are exempt networks) and to give preference to connecting customers to NBN fibre.
[4] See the summary of the TUSMA Agreement included at page 13 of the summaries of the Definitive Agreements provided by Telstra with its media release in relation to signing the Definitive Agreements on 23 June 2011.
[5] Section 577A(10) of the *Telecommunications Act 1997* (Cth).

2. TELSTRA’S COMMITMENTS ON INTERIM EQUIVALENCE AND TRANSPARENCY

2.1. OVERVIEW

The Interim Equivalence and Transparency regime replaces Operational Separation with a regime that provides:

- new commitments to price equivalence – including transparency around the price of internal transfer inputs that are common across retail and wholesale services and at an equivalent cost;
- new commitments on equivalence for wholesale broadband services – for the first time, Wholesale ADSL2+ will be directly controlled and wholesale pricing will align to changes in retail BigPond ADSL2+ prices and wholesale functionality will incorporate any new network level (layer 2) DSL upgrades (e.g. new speeds) offered to retail business units;
- stricter commitments on keeping confidential and commercially sensitive wholesale information from being accessed by Telstra’s retail personnel – including that retail personnel will not be given access to aggregated wholesale information at a sub-national level unless the ACCC allows equivalent access to this information in future;
- new equivalence commitments on systems and processes to manage orders – backed by automatic rebates for failures to comply with standards of equivalence;
- clear and extensive commitments about how the retail, wholesale and network services business units are to deal with each other – including clear restrictions around marketing activities of field staff to reinforce the ‘customer agnostic’ focus of their work;
- increased transparency for the ACCC, particularly on price related issues; and
- fast-tracked and independent dispute resolution processes – allowing any wholesale customer’s equivalence complaints to be quickly and conclusively resolved, potentially with Telstra being required to make changes in its systems and processes required to address systemic non-price equivalence problems.

Diagram 1 below highlights the range of commitments that Telstra is making under the Interim Equivalence and Transparency regime and the central role given to the ACCC in directly enforcing the SSU.

Importantly, unlike the existing operational equivalence rules (with their indirect rectification notice regime for enforcement) the provisions of the SSU are directly enforceable by the ACCC in the Federal Court. If the Federal Court finds that Telstra has breached the SSU, it may impose substantial remedies, including:

- financial penalties of up to $10 million per contravention;
- orders directing the disposal of shares or parts of Telstra’s network or other assets;
- orders to compensate anyone who has suffered loss as a result of the contravention.

Telstra’s SSU commitments are outlined in more detail below.

Diagram 1. Overview of Interim Equivalence and Transparency measures

2.2. COMMITMENTS ON PRICE EQUIVALENCE

The SSU will include new commitments by Telstra to ensure equivalence in pricing across wholesale customers and Telstra's retail business and improved transparency in relation to Telstra's internal costs.

The SSU will include two substantial price equivalence and transparency commitments:

2.2.1. RATE CARD OF WHOLESALE PRICES, INCLUDING NEW RETAIL MINUS PRICING COMMITMENT FOR WHOLESALE ADSL:

- A commitment to publish a rate card with reference prices for key regulated wholesale services, including for the ULLS, LSS, WLR, LCS, PSTN OTA and wholesale ADSL2+ services. These reference prices will be made available to all wholesale customers after their existing contracts expire (although they still have the option to enter into new bespoke arrangements). For the declared services, the reference prices will be as determined by the ACCC under the existing access regime. For wholesale ADSL2+ (which is not a declared service), reference prices will be calculated on a 'retail-minus' basis and will be adjusted whenever Telstra materially changes its pricing for BigPond retail ADSL2+ services. In addition, the new wholesale reference ADSL2+ price will be reviewed every 6 months to make sure that it also reflects any changes in Telstra's retail costs. This means that for the first time, wholesale ADSL 2+ pricing will be directly

regulated. However, Telstra will not be required to change the reference price for wholesale ADSL to the extent that such a change would require Telstra to supply it below cost.

- While Telstra wholesale customers have the option of taking the reference prices, they can continue to negotiate alternative prices or an alternative price structure with Telstra. Telstra undertakes to amend its standard wholesale contract terms for the relevant set of wholesale products so that the reference prices, as updated from time to time, will apply automatically in the absence of alternatively agreed prices.
- The commitment to publish reference prices will be subject to review after three years, to ensure that it is continuing to achieve its objectives.

2.2.2. REPORTING OF EQUIVALENCE BETWEEN INTERNAL WHOLESALE PRICES AND EXTERNAL WHOLESALE PRICES:

- Telstra will periodically publish reports based on the Telstra Economic Model (TEM) that makes the revenue and cost information that Telstra itself uses to run the business transparent to the ACCC. Telstra has committed to use the TEM as the primary management accounting system for Telstra's own business planning purposes – including to set out its revenues and costs on a per unit basis for the regulated services (ULLS, LSS, WLR, LCS, PSTN OTA and wholesale ADSL), and for comparable retail products. Reported costs will include operating costs, depreciation and a return on capital. The TEM report also will show EBIT for each product and "economic return" (revenue less all costs, including a return on capital). This report will show the extent to which wholesale pricing for wholesale customers (represented by Telstra wholesale revenue for each product) is equivalent to the effective internal wholesale price faced by Telstra's retail business for comparable services (represented by Telstra's internal costs for the same network requirements).
- Where a TEM report shows that a wholesale price faced by wholesale customers is not within +/-5% of the effective internal wholesale price faced by Telstra for certain wholesale service bundles, Telstra will be required to submit to the ACCC a "substantiation report" providing an explanation for this result. These results and any substantiation reports will be made available to the ACCC for any future ACCC regulated pricing reviews if there is a need to better align Telstra's internal wholesale prices with wholesale prices charged to wholesale customers.

Collectively, these commitments will provide transparency to the ACCC and wholesale customers around the equivalence of Telstra's internal and external wholesale pricing. These commitments will also promote transparency around the basis for pricing of key wholesale inputs. The ACCC will have available its enhanced powers under Part XIB and Part XIC (including binding rules of conduct) to act quickly to deal with any competitive pricing concerns revealed by this greater transparency.

2.3. COMMITMENTS ON NON-PRICE EQUIVALENCE

2.3.1. SHIFT FROM THE CURRENT APPROACH OF "MEASURING EQUIVALENCE" TO "ENFORCING EQUIVALENCE"

The current Operational Separation regime has been criticised because it measures whether there has been equivalence in the past, without necessarily triggering direct consequences if non-equivalence issues are seen to arise.

The SSU addresses this criticism through specific, binding commitments by Telstra to use systems and processes to manage orders, fulfill service requests and deal with faults equivalently. Telstra's performance against these commitments will be assessed against clear performance metrics based on those in place under Operational Separation, but modified to sharpen their impact). If equivalence is not delivered, Telstra faces direct 'pay and fix' consequences:

- **'pay':** if Telstra's performance in a quarter for wholesale service when compared to a required service level metric is worse than for comparable retail services by more than an allowed margin (generally 2%), Telstra is required to provide wholesale customers with a rebate for

each affected service, generally equal to one month's recurrent charge. The rebate applies automatically - wholesale customers do not need to make a claim. The SSU rebate commitment is binding on Telstra but not on wholesale customers. They can choose not to participate in the rebate regime and instead to commercially negotiate SLAs with Telstra or rely on other entitlements, such as a wholesale Customer Service Guarantee, but if a wholesale customer does participate, the SSU rebate will be the sole performance remedy; and

- **'fix':** Telstra is required to publish quarterly performance reports as well as provide these reports directly to the ACCC and the Adjudicator. If an adverse non-equivalence issue outside the allowed minimal margin is reported, Telstra must provide a further report to the ACCC and the Adjudicator which explains why this is the case and how Telstra is going to correct the problem. Wholesale customers can also make non-price equivalence complaints through an expedited Telstra process and if not resolved, on to the Adjudicator (see below).

The metrics that will be used to determine if a rebate applies are subject to some general conditions, which predominantly reflect the approach used in the calculation of metrics under Operational Separation. In addition, Telstra is not required to count failures which occur in regions where NBN Co is undertaking installation or connection activities for the purposes of determining whether rebates are required. This is because as part of the migration process both Telstra and NBN Co will be undertaking a range of activities that are not 'business as usual' (for example, Telstra may need to clean out ducts or access equipment in order to prepare them for NBN Co's installation program). These migration-specific issues are not the intended focus of the operational metrics, which are intended to demonstrate equivalence of operational activities by Telstra in its day-to-day operations, as between wholesale and retail customers and services during the interim period prior to the NBN roll-out.

If the performance metrics are to automatically trigger rebates, it is important that the metrics should be robust and reliable. Therefore, Telstra has included a statistical significance threshold for metrics which involve a comparison between retail and wholesale performance, below which the numbers involved are so small in either absolute or comparative terms that any statistical variation is likely to be too unreliable to trigger automatic consequences. Telstra's performance will be disregarded where wholesale orders are:

- less than 1500 orders in aggregate for the relevant quarter [6]; or
- less than 10% of the volume of orders placed for Telstra's retail customers for the same metric in the same quarter.[7]

Finally, Telstra notes that the SSU provides that, as well as these binding commitments and remedies, in cases of a systemic failure to provide equivalent systems, the ACCC also has power to go directly to the Federal Court to enforce the commitments to equivalent processes and systems.

2.3.2. BROADBAND PRODUCT EQUIVALENCE COMMITMENTS

Telstra's new commitments on wholesale DSL effectively will give wholesale customers the key price and non-price benefits of service declaration. These commitments should help address industry concerns that, before the migration to the NBN begins, Telstra could attempt to 'lock in' retail customers by offering superior retail broadband access on its legacy copper network.

ULLS and LSS-based providers, of course, already have the ability to build their own DSL products on copper, which they can offer in retail and wholesale markets. However, Telstra is also making commitments on broadband DSL product equivalence to ensure that wholesale customers who rely

[6] Telstra has concluded that the threshold of at least 1500 orders is relevant and appropriate by analysing combinations of volume and performance levels at which metric results produce robust data which is statistically significant (as opposed to reporting chance random variations). Depending on the volume of events (in this case, orders) reported on, the probability of the allowable tolerance of 2% being exceeded purely by chance, rather than by meaningful non-performance, alters. By convention, if the probability of a variation occurring is less than 5% (or, in other words, the confidence level is 95%), the notion of a chance variation is rejected and the variation is interpreted as 'real' variation from the underlying level of performance. On Telstra's calculation, a volume of at least 1500 events (or orders) is required before there is a variation of 2% which is statistically significant to a confidence level of 95% - making it a 'real' 2% variation as opposed to a variation purely by chance.

[7] The 10% wholesale orders compared to retail order volume threshold is also important because, when wholesale order volumes are much smaller than retail order volumes, negative results outside the minimum allowable 2% tolerance may be produced by immaterial volumes of non-performance against the service levels applicable to the comparative metrics. With such disproportionate volumes, the metric allowable tolerance of 2% may be exceeded even though there is no issue of non-equivalence.

on resale services acquired from Telstra are not technologically left behind in the run-up to the NBN (including ULLS and LSS builders that consider it is more feasible to use resale wholesale services in certain areas or for certain customer groups).

Under this new commitment, if Telstra develops new network capability (delivered at Layer 2) which is used to support enhanced product features and/or functions for retail DSL services, Telstra will simultaneously provide an equivalent wholesale version of the network level upgrade to wholesale customer. The types of upgrades Telstra would have to make available equivalently to retail and wholesale would include new line speeds.

This commitment to DSL product equivalence applies across Telstra's full DSL product range, including not only the ADSL services which must be included in the Interim Equivalence and Transparency regime, but also to other forms of DSL that may be offered by Telstra at retail.

The other significant broadband-related commitment which should facilitate broadband competition in the run-up to the NBN is the link between wholesale prices for Wholesale ADSL and changes in retail BigPond prices, outlined above.

2.3.3. ADDITIONAL NON-PRICE EQUIVALENCE COMMITMENTS

Telstra is also making new binding commitments for other regulated services that reach beyond their treatment under the current Operational Separation regime:

- Telstra will commit to process requests for exchange space (TEBA) and external interconnection duct space received from wholesale customers in an equivalent manner to internal requests for access to the same exchange building for the purpose of supplying Telstra's own retail and wholesale services. Queuing for space is to be managed in a non-discriminatory and transparent manner. There are also rules about designating exchanges as capped exchanges and a governance structure for exchange space;
- Telstra is making service quality commitments on transmission capacity (DCTS), backed by the automatic rebate commitment; and
- Telstra will be required to ensure that specified wholesale business support systems are fit for the purpose of performing a specified set of functions. These systems are to have a high degree of reliability (at least 98% uptime), otherwise a rebate will be automatically paid to wholesale customers that opt into the service level rebate regime described above.

2.4. CLEAR RULES ON DEALINGS BETWEEN SEPARATED BUSINESS UNITS

The SSU commits Telstra to clearer rules about how Telstra's retail, wholesale and network services business units are to be organised and how they are to deal with each other. The main focus of the ring fencing arrangements is on dealings between the retail business units and the other separated business units (wholesale business units and, to a lesser extent, the network services business units). This approach is consistent with the concerns about vertical integration.

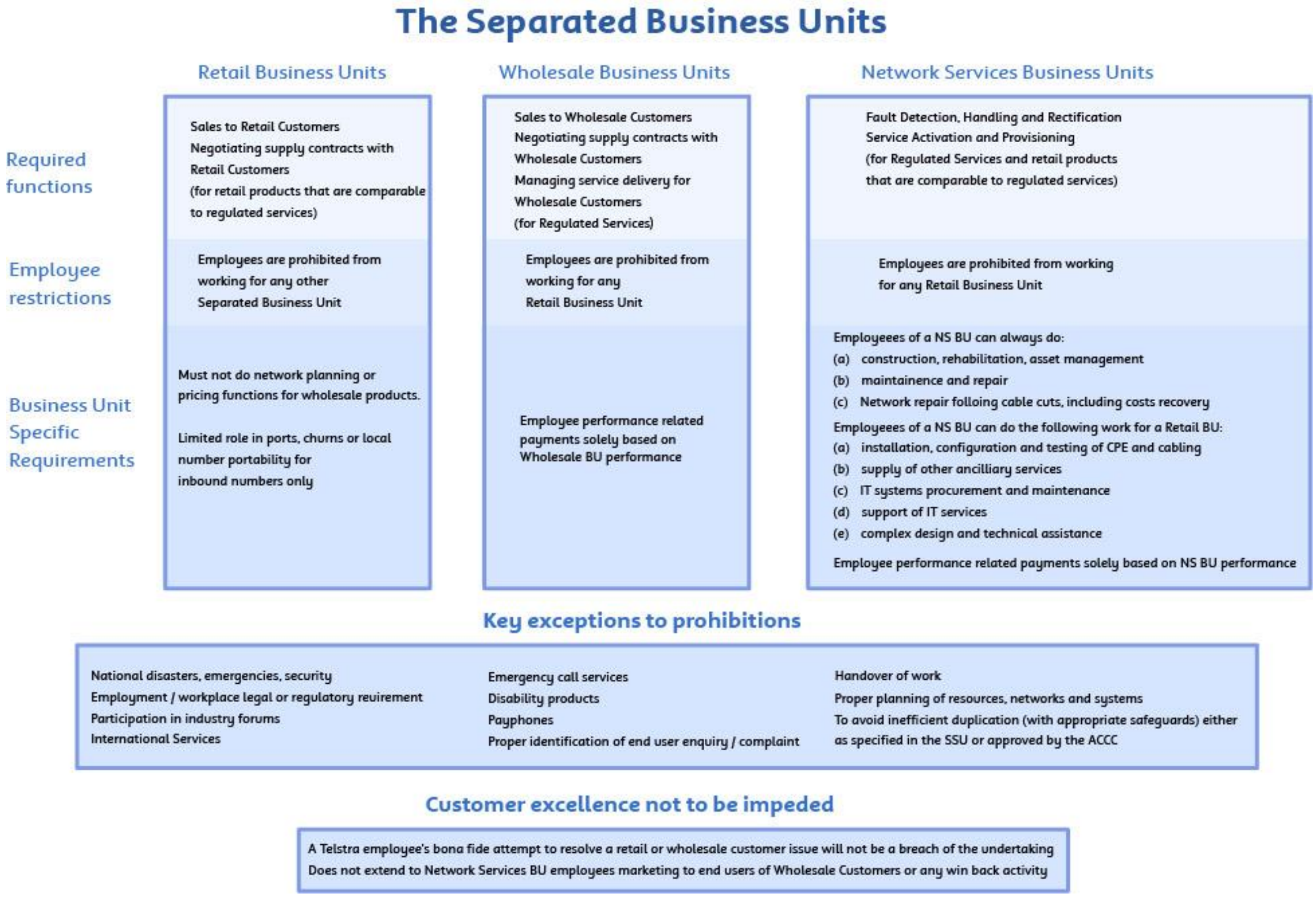
These new commitments include:

- Retail business units are prohibited from undertaking a series of specified functions because they could impact both retail and wholesale services. These functions include network planning, strategic decisions about wholesale pricing, and functions which Telstra undertakes for or on behalf of the industry, such as processing and implementing churns and number portability requests (although the retail business unit can receive and lodge service requests like wholesale customers and continue its current function of account validation for inbound number portability).
- Employees that work for a retail business unit will be prohibited from undertaking any work for a wholesale business unit or network services business unit (and vice versa), with limited specified exemptions. International services, payphone services and emergency call services are exempt (as they are under Operational Separation) and temporary exemptions apply during an emergency or natural disaster. Exceptions are also permitted for functions that have been approved by the ACCC (either as part of the SSU or at a later time) where it is technically or

operationally efficient for that function to be shared. The SSU also sets out some examples of functions which involve interactions between employees of separated business units but will not be subject to the ring fencing arrangements – these include dealings between employees to enable the referral of end user issues or complaints to the correct business unit for resolution and interactions between employees which enable the proper planning, construction, management and operation of Telstra's networks, systems and resources. However, safeguards still apply to ensure Telstra cannot take unfair competitive advantage of the shared function, such as maintaining information security for wholesale customer information (see the more detailed discussion in Annex 1).

- There are measures to reinforce the 'customer agnostic' focus of the network services business unit. The performance-related element of remuneration for employees of the network services business unit is to be based solely on the performance of the business unit (including their performance in providing equivalence). There is limited grandfathering of remuneration schemes which were on foot before the SSU was lodged. Field staff who attend end user premises (retail and wholesale) are also subject to clearer restrictions on undertaking marketing activities where an end user is a customer of wholesale customer – including if the end user is also a Telstra retail customer.
- There are information security rules to protect wholesale customer information These rules cover not only confidential information which explicitly identifies a wholesale customer or its customers, but also information which, although the wholesale customer's name is redacted, would allow a retail business unit to work out the identity of the wholesale customer. The information security rules have also been extended to prevent Telstra retail business units from having access to aggregated wholesale information on a region by region basis unless the ACCC agrees in the future that the same information should be available to all wholesale customers.
- There are measures to ensure the wholesale business unit will function on its own terms, including location in secure premises, the head of wholesale being at an equivalent level in Telstra's organisation as the head of retail and the wholesale business unit having the resources and personnel to meet its obligations under the SSU. Like in the network services business unit, the performance-related element of remuneration for employees of the wholesale business unit must be based solely on the performance of that business unit (with the same limited grandfathering).
- Telstra is required to maintain systems and processes for recording employee physical movement between separated business units and systems and processes for recording incentive remuneration practices. The incentive remuneration practices will be subject to annual independent verification by an external consultant. Telstra is also required to provide employees of the separated business units with mandatory training about the prohibitions on work and information security and other aspects of the organisational arrangements under the SSU (see below).

Diagram 2. Overview of new ring fencing arrangements



2.5. IMPROVED TRANSPARENCY AND COMPLIANCE

One of the criticisms of the current Operational Separation regime is that it is difficult for the ACCC and wholesale customers to verify Telstra's equivalence claims. The SSU commits Telstra to significantly greater transparency:

- Telstra will regularly provide the ACCC with reports from its management accounts tracking its use of internal wholesale prices for regulated services and comparable retail services (as discussed above);
- Telstra will publish a quarterly non-price equivalence performance report for regulated services and comparable retail services and, where an adverse non-equivalence result detrimental t wholesale customers outside the allowed minimal margin is reported, Telstra is to provide a further report to the ACCC and the Adjudicator (on a confidential basis) which explains why this is the case and how Telstra is going to correct the problem (as discussed above);
- Telstra will provide the ACCC with an annual compliance report which, amongst other things, must provide a summary of Telstra's compliance with the SSU and the steps it has taken to resolve instances of non-compliance; and
- Telstra will prepare a compliance program, including training for employees, in consultation with the ACCC.

2.6. IMPROVED DISPUTE RESOLUTION AND ENFORCEMENT

The SSU will put in place a completely new process to resolve non-price equivalence disputes between Telstra and wholesale customers which combines expedition in the internal review process with external resolution where needed:

- **an accelerated 'first-line' response to complaints:** Telstra believes that the best way to resolve disputes is to attempt to first find a solution between Telstra and the wholesale customer, but without locking wholesale customers into that process if it is leading nowhere quickly. Telstra will introduce a new, accelerated internal investigation process which it will use to investigate all non-price equivalence complaints from wholesale customers. The SSU sets out a structured process with clearly defined stages and timelines for the process. There are also various points in the process where the wholesale customer can directly escalate the complaint to the Adjudicator if the wholesale customer is not satisfied with the outcome. If the wholesale customer agrees to Telstra's proposed solution to a complaint, Telstra must then implement it, in accordance with the proposed rectification plan; and
- **independent, knowledgeable and practical external dispute resolution:** Telstra commits to establish the Adjudicator, modeled on the successful industry adjudicator operating in the United Kingdom, to provide 'root cause' analysis of non-price equivalence issues. The Adjudicator will be an independent technical expert with the power to issue binding directions on all parties to a complaint, including Telstra. There are also defined stages and timelines for the process to ensure the proceedings cannot be unnecessarily delayed.

To participate, wholesale customers need to sign up to the Adjudicator scheme, which takes the form of an agreement with Telstra, under which both parties commit to comply with any directions made by the Adjudicator. This also ensures that Telstra is contractually committed to wholesale customers to participate in good faith and comply with the process (and so wholesale customers are not solely reliant on ACCC enforcement under the SSU).

The entity that is established as the Adjudicator scheme will be a company limited by guarantee (which is a requirement of legislation – see section 152EQ of the Competition and Consumer Act 2010 (Cth)). However, the company itself will not be performing the role of the independent adjudicator that is responsible for hearing equivalence complaints and giving directions. The role of the Adjudicator will be performed by a person that is appointed by the company's board with the approval of the ACCC and there are numerous measures which ensure the independence of this person from Telstra and the board. For corporate governance and organisational purposes, the corporate entity will be a Telstra subsidiary.

In response to the draft SSU Guidance, many industry players expressed concern about the independence of the Adjudicator. To address those concerns, the SSU provides a number of measures to guarantee the independence of the person appointed as Adjudicator, including:

- the ACCC is to approve the person nominated as the Adjudicator;
- the ACCC is to approve a Charter of Independence which will govern the employment/consultancy relationship between the board and the person appointed as the Adjudicator. This Charter is to provide the Adjudicator with security of tenure, the right to consult directly with the ACCC without the board's prior approval and powers for the ACCC to resolve alleged conflicts of interest and issue independence directions;
- the ACCC is to approve the company constitution of the company (and any future changes). The SSU specifies matters to be included in the constitution, including the principle that, to the extent permitted by the Corporations Law, the person employed as the Adjudicator is to operate independently of Telstra and the directors and their role is to be confined to the legal and administrative functions required by that law; and
- the ACCC can consult with the industry on any of the above.

The Adjudicator will have powers to investigate and resolve complaints under both the SSU as well as disputes related to disconnection-related processes used or developed by Telstra as part of the migration processes under the Migration Plan. The Adjudicator process requires Telstra (and any other parties to a complaint) to comply with any direction made by the Adjudicator to develop a proposal that solves any identified problems. Having the Adjudicator resolve disputes through specifically defining the 'outcomes' and then requiring Telstra to develop a proposal to achieve the required outcome recognises that Telstra's systems and processes are often complex and operate across a range of products (both regulated and unregulated) and so Telstra will usually be best

placed to design the specific process and systems changes that are needed. However, the Adjudicator has the final say over the acceptability of Telstra's proposal – including making specific directions as to how the proposal should be amended.

In Telstra's view, the Adjudicator scheme will be most successful if the scheme focuses on non-price issues and disputes capable of quickly implemented, practical solutions. Should major differences over the requirements of equivalence or regulated access generally arise between Telstra and its wholesale customers, these can be more effectively addressed by the ACCC – which has considerably enhanced powers at its disposal, including powers to enforce the SSU commitments on equivalence and its Part XIB and Part XIC powers.

To this end, Telstra's belief is that the most clear-cut way of delineating the Adjudicator's jurisdiction is to place an annual monetary cap on the cost of the system or process changes Telstra can be required to implement by the Adjudicator. Telstra has provided for a soft per dispute cap of $1 million, beyond which the Adjudicator is required to weigh the costs of system changes against the benefits of making those changes, and an aggregate annual cap of $10 million.

3. MATTERS THE ACCC MUST TAKE INTO ACCOUNT WHEN DECIDING WHETHER TO ACCEPT TELSTRA'S DRAFT SSU

Section 577A requires that in deciding whether to approve the SSU, the ACCC is required to have regard to the following issues:

- the national interest in structural reform of the telecommunications industry, including its impact on consumers and competition;
- that the SSU puts in place appropriate and effective measures during the migration period to ensure transparency and equivalence in the supply by Telstra of regulated services to its wholesale customer and retail business units;
- that there are appropriate and effective mechanisms in place to enable the ACCC to monitor Telstra's compliance with the SSU; and
- any other issues which the ACCC considers relevant.

The SSU Guidance also specifies a list of matters which the ACCC must take into account. The matters specified in the SSU Guidance, in effect, are a more detailed statement of the statutory criteria. The table in Annex 2 sets out how the SSU meets each of the criteria in the SSU Guidance.

The SSU commitments to structural separation (Part C) reflect, and will be driven by, the incremental process of deployment of the NBN and the disconnection of the Telstra copper networks and HFC networks in accordance with the Definitive Agreements. The Explanatory Memorandum to the SSU Guidance makes clear that the approach taken by the Definitive Agreements is consistent with the Government's policy[8]:

> *In accordance with the definitive agreements with NBN Co, Telstra will elect to structurally separate by migrating its customer services to the NBN Co fibre network as that network is progressively rolled out. Most of the copper network would be disconnected and use of Telstra's HFC network would be limited to pay TV services (the scope of Telstra's SSU is discussed in the Explanatory Statement accompanying the Telecommunications (Structural Separation Undertaking—Networks and Services Exemption) Instrument 2011). This method of structural separation is supported by the government as it delivers the government's structural reform objectives of a wholesale-only network operating across the country which is not controlled by any retail provider.*

In determining the appropriate scope and character of the Interim Equivalence and Transparency measures, three factors need to be kept in mind:

- Structural separation and functional separation are alternatives in the legislative scheme introduced by the CCS Act. It was not intended that Interim Equivalence and Transparency would amount to another version of functional separation. This is made clear by the Explanatory Memorandum to the SSU Guidance that provides[9]:

  > *The measures set out under [the E&T Guidance] are aimed at providing meaningful improvements to the current transparency and equivalence measures and are planned to complement the recent changes to the telecommunications access regime. <u>They are not intended to require Telstra to implement functional separation.</u> In accordance with the Act, if Telstra chooses not to voluntarily structurally separate it will be required to implement functional separation.*

- Consistent with the roll out schedule detailed in NBN Co's Corporate Plan, NBN Co's entry to the market as a wholesale-only provider and the progressive disconnection of the Telstra copper and HFC networks will have a substantial impact on market dynamics well in advance of the completion of the NBN and Telstra's complete structural separation at the Designated Day – so

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[8] Explanatory Memorandum, Telecommunications (Acceptance of an Undertaking about Structural Separation – Matters) Instrument 2011, at page 4.
[9] Explanatory Memorandum, Telecommunications (Acceptance of an Undertaking about Structural Separation – Matters) Instrument 2011, at page 5.

that equivalence and competition concerns will become increasingly marginal as the rollout progresses.

- Significant re-development of industry's legacy systems would be unnecessarily wasteful and disruptive. Migration to the NBN will involve Telstra, and wholesale customers as well, substantially rethinking, rebuilding, and replacing current systems, processes, and work practices. Telstra itself needs to be able to internally reorganise, rebuild systems and processes and readjust its business to cope with its transformation to being a network based operator on copper and HFC to being services-based competitor using the NBN. Network decommissioning and migration has never been attempted anywhere on this scale before. The Interim Equivalence and Transparency framework should not require substantial investment and effort in changing systems and processes which will then be quickly rendered redundant or progressively retired as the NBN is deployed, nor side track Telstra (and the industry) from the bigger picture of getting NBN migration right.

Changes in Telstra legacy systems also are likely to flow onto changes and disruption for retail and wholesale customers, who themselves also face changes to migrate to and use the NBN. Within this framework, the Interim Equivalence and Transparency measures meet the statutory requirement of "appropriate and effective measures during the migration period to ensure transparency and equivalence in the supply by Telstra of regulated services to its wholesale customer and retail business units", for the following reasons:

- *transparency and equivalence of pricing for key wholesale inputs:* Telstra commits to report on costs and revenues for key wholesale inputs across regulated wholesale and comparable retail services. This will allow for comparison of effective internal wholesale prices with prices charged to wholesale customers for equivalent inputs. Telstra will also publish "reference prices" for these wholesale inputs, which will be made available to wholesale customers;
- *clear commitments to non-price equivalence, with economic incentives to deliver and tangible consequences if Telstra does not:* Telstra's failure to deliver non-price equivalence will have direct, meaningful consequences (the threat of which will, in turn, drive compliance). The staff of the network services business unit, whose primary 'Required Function' is to deliver equivalent order management and service implementation for retail and wholesale services, will have powerful economic incentives to ensure equivalence because their performance-based pay will be based on whether they achieved equivalence. If equivalence is not delivered (beyond a minimal tolerance level), Telstra also will automatically face the payment of rebates (which itself provides an economic incentive to deliver on equivalence). In addition, if Telstra still does not agree there is a problem, or does not take the right action to fix it, the Adjudicator can direct Telstra to change its systems and processes to achieve equivalent outcomes where this is lacking. In more serious cases, Telstra also faces the risk of enforcement proceedings by the ACCC, with the risk of substantial sanctions and penalties in the Federal Court;
- *expanded reach of equivalence:* The SSU contains new and significant commitments to equivalence over and above the core commitments on ordering, provisioning and fault repair. Telstra has committed to product equivalence at layer 2 across the full range of its DSL products. As well, Telstra has committed to a retail-minus pricing approach to wholesale ADSL 2+, with lock step adjustments as Telstra changes its retail prices. In effect, the commitments on Wholesale DSL largely mimic service declaration. These broadband related commitments are amongst the most significant in the SSU because, together with the ACCC's decision on ULLS and LSS pricing, they can be expected to stimulate further competition in broadband services in the lead-up to migration to the NBN. Other new commitments include a commitment on fit-for-purpose wholesale business support systems and on equivalence in supply of TEBA;
- *measures to address concerns about vertical integration:* Telstra has made commitments to address concerns that, in a vertically integrated business, retail predominates over wholesale. There are strengthened commitments to ring fence staff, functions and information of the wholesale business unit from the retail business unit, with limited exceptions. The retail business unit is prohibited from undertaking particular functions which are key to wholesaling or competition generally, such as network planning, decisions on wholesale pricing, and

implementation of churn and local number portability requests. The information security rules will prevent the retail business unit having access to masked information about individual wholesale customers and to aggregated wholesale information at any level of meaningful granularity. There are commitments to maintain the customer agnostic focus of the network and services business unit by limiting what it can do for retail business units beyond its primary functions and restricting marketing activities by field staff; and

- *stronger compliance and enforcement:* Regular reporting on price and non-price performance, as required by the SSU, provides the ACCC with a much greater level of transparency than currently applies under Operational Separation. Telstra’s reporting obligations requires it to call out instances of non-compliance and detail the action it has taken or is proposing to take to rectify. There are direct and immediate consequences for poor performance through the payment of rebates and the establishment of the Adjudicator increases the level of independent external accountability for day to day equivalence problems which otherwise might not be so appropriate or readily addressable by full scale enforcement proceedings.

The combined package of Interim Equivalence and Transparency measures and progressive structural separation – backed-up by the SSU mechanisms and the ACCC’s other enhanced powers under Parts XIB and XIC - should provide the ACCC and industry with confidence that the SSU represents a genuine effort by Telstra to come to grips with the concerns about the ineffectiveness of the current Operational Separation regime in dealing with vertical integration.

Part 2: Telstra's draft Migration Plan

The Migration Plan is a document which the *Telecommunications Act 1997* (the Act) permits Telstra to lodge for approval by the ACCC and which specifies the various actions Telstra will take as part of the migration process. In effect, while the SSU specifies the 'what' of structural separation, Telstra can use the Migration Plan to explain the 'how'.

4. TELSTRA'S LIMITED ROLE IN MIGRATION TO THE NBN FIBRE NETWORK

4.1. CONNECTION AND DISCONNECTION ARE SEPARATE PROCESSES

Telstra understands that NBN Co will publish an information guide which describes how the end to end process of migration will work. The following discussion focuses on Telstra's role in disconnecting retail and wholesale services on its copper network as context for the discussion of Telstra's commitments in the draft Migration Plan in this section 2.

Migration to the NBN fibre network will operate differently to the way in which customers often transfer ('churn') between service providers on Telstra's network today, such as between Telstra Retail and a ULLS-based service provider. NBN migration involves two different networks and two network operators. There is, therefore, no single 'end to end' network level process nor a single 'owner' of the processes used in migration. NBN Co will be responsible for connection of new fibre services on the NBN and Telstra will be responsible for disconnection of services on its copper network and the HFC network. Using these connection and disconnection process tools, each service provider will be responsible for managing its own customer base to ensure individual customers are migrated before the mandatory disconnection of Telstra retail and wholesale services in each area.

The disconnection of Telstra services on Telstra's network will occur equivalently between Telstra and other service providers. Similarly, Telstra, as a service provider on the NBN fibre network, will be required to use the same connection processes on the NBN as any other service provider. Further, as the network operator of the main fixed telecommunications infrastructure to be replaced by the NBN fibre network, Telstra must use equivalent processes to disconnect retail and wholesale services on its copper network.

4.2. RELATIONSHIP BETWEEN THE MIGRATION PLAN AND NBN ROLLOUT

Telstra's disconnection obligations arise under the Definitive Agreements, as reflected in the draft Migration Plan, where and when NBN Co deploys the NBN fibre network. There are two key concepts in this process:

- The rollout of the NBN fibre network will occur on a region by region basis, typically based on individual NBN Fibre Serving Area Modules (each referred to as a Rollout Region). [10]
- The fibre footprint in respect of a Rollout Region comprises the premises within that Rollout Region that are passed or are intended to be passed by the NBN fibre network (**Pass**). The Government's rollout objective for the NBN Co fibre network is that it Pass 93% of premises in Australia. The 93 per cent that will be Passed and the 7 per cent that will not be Passed are not neatly segmented into separate geographic areas. Therefore, not all of the premises within a Rollout Region necessarily will be within the fibre footprint. Nor will all of the premises passed by the NBN necessarily be NBN serviceable (i.e. be capable of being connected to the NBN).

[10] There are different types of rollout regions which will be described in more detail in the Information Paper, but broadly the process of migration will occur in the same way across rollout regions.

4.3. MIGRATION TIMETABLE IN A ROLLOUT REGION

Telstra understands that for standard Rollout Regions NBN Co generally will give at least 12 months notice of the forecasted Region Ready for Service Date to all service providers (including Telstra).

Once the NBN fibre network has been constructed to the point that it has passed at least 90 per cent of premises in the proposed fibre footprint within a Rollout Region, NBN Co may notify all service providers (including Telstra) of the date from which that Rollout Region will become Region Ready for Service.

From the Region Ready for Service Date, NBN Co will begin to process orders from service providers for the connection of premises in the fibre footprint in the Rollout Region (although NBN Co may start accepting orders from service providers prior to the Region Ready for Service Date, so that it is ready to start activating services on 'day one').

During the 18-month period from the Ready for Service Date to the final Disconnection Date for a Rollout Region (the **Migration Window**), cancellation of the Telstra retail or wholesale copper services does not follow automatically from the relevant premises being NBN Connected. For example, NBN Co will not notify Telstra:

- when NBN Co has received a connection order from another service provider for a premises currently connected to the Telstra copper network or the Telstra HFC network;
- of the scheduled time when NBN Co's contractor will be attending at that premises to install NBN infrastructure; or
- that the NBN fibre network has been successfully connected at the premises.

As a result, Telstra may not become aware of the need to disconnect the existing services following connection of premises to the NBN fibre network until Telstra receives a service cancellation order from the retail or wholesale customer (even then, Telstra will not necessarily know that disconnection is associated with NBN migration rather for some other reason, such as the end user moving house). For this reason, it will be up to Telstra's wholesale customers to separately submit service cancellation orders to Telstra for services on Telstra's network.

Telstra is required to disconnect all remaining copper and HFC services (with limited exceptions such as special services) at the end of the Migration Window.

4.4. PULL THROUGH

At some premises, it may be necessary to use an existing copper line to pull through the new NBN fibre in order to connect a service on the NBN at that premises. This will result in a disruption to the Telstra retail or wholesale services provided over that copper line, usually for no more than a few hours.

Telstra expects that, at many premises, the 'pull through' process will not be needed because there should already be enough spare room in the conduit for the fibre optic line to be pushed through by the NBN Co installer without the need to disconnect or use any copper line.

In summary, where pull through activities are required:

- as pull through is associated with the connection of premises to the NBN, NBN Co (not Telstra) makes the decision about whether pull through is required. However, as pull through will result in the use of the Telstra copper line (which will cause a temporary outage of a service), the draft Migration Plan deals with the relevant parts of the pull through process;
- pull through is not a 'deemed disconnection' of the Telstra copper service. NBN Co is required, except in very limited circumstances, to reconnect the Telstra copper line. This means that the service provider for the current Telstra service will still need to lodge a disconnection request to cancel the Telstra wholesale service; and
- there will be safeguards in place if connection to the NBN cannot be completed on the same day as pull through. NBN Co is required, except in limited circumstances, to remain on site at the

premises until the Telstra lines have been successfully reconnected or a temporary cable is installed and tested to restore the Telstra retail or wholesale service.

4.5. SPECIAL SERVICES

While the processes described above will be relevant for customers with a standard voice or broadband connection, the existing copper network is also used to supply a wide range of more sophisticated telecommunications services (**Special Services**). For example, Telstra's copper network is used (including by means of ULLS and LSS services) to provide Special Services as varied as:

- high speed broadband links used by businesses to establish 'virtual private networks';
- dedicated EFTPOS networks that are used to handle and transmit in-store debit and credit card transactions;
- communications between networks and public utility equipment or other automatic equipment such as traffic lights, metering equipment, automatic teller machines, alarm systems and medical equipment; and
- ISDN services that allow a single copper line to be used to support two digital channels (e.g. voice and fax or multiple voice lines).

Special Services will have their own disconnection timeline and process, triggered either by NBN Co's development of fibre-based product which can support a particular class of Special Service or by Telstra's own product exit arrangements. In the meantime, Telstra and other service providers can continue to use the Telstra copper network to supply Special Services, including beyond the Disconnection Date in a Rollout Region. This includes using ULLS and LSS to provide services that are equivalent to those Special Services.

On the Special Services Disconnection Date for a class of Special Services, all Special Services of that class must be disconnected in any Rollout Regions that have already been migrated to the NBN (including all ULLS and LSS used to supply services equivalent to Special Services of that class). Going forward, any Special Services within that class must be disconnected at the Disconnection Date in the same way as standard services in any future Rollout Regions that are migrated (including disconnection of ULLS and LSS used to supply services which are equivalent to Special Services of that class).

5. TELSTRA'S COMMITMENTS IN THE DRAFT MIGRATION PLAN

The draft Migration Plan implements the incremental disconnection process outlined above. The following summarises the key provisions of the draft Migration Plan.

5.1. USE OF BUSINESS AS USUAL DISCONNECTION PROCESSES

Telstra has well established retail and wholesale processes (including business to business systems used by most wholesale customers) for cancelling services. These systems are scalable and well understood – and are now also supported by minimum system availability commitments under Telstra's Interim Equivalence and Transparency measures.

The draft Migration Plan Principles commits Telstra to the general principle that it should to the extent that it is reasonable and practicable to do so, using these existing "business as usual" processes, systems and interfaces.

Consistent with this general principle, the draft Migration Plan:

- specifies the current disconnection processes for retail and wholesale services as the processes which Telstra will use during the Migration Window (see Schedule 1 of the draft Plan); and
- commits Telstra to use of existing Local Number Portability code and industry processes to facilitate the migration of services to the NBN.

The draft Migration Plan also provides that disconnection processes which are yet to be developed (see Required Measures below) also should to the extent practicable use existing business as usual processes.

The draft Migration Plan also provides that Telstra's business as usual processes will apply to disconnections within the fibre footprint which are unrelated to NBN migration, such as disconnection where a customer fails to pay due charges or where Telstra undertakes a product exit.

5.2. SERVICE PROVIDER CONTROL OVER THE TIMING OF DISCONNECTION

The draft Migration Plan gives wholesale customers autonomy over decisions about when to disconnect services in two ways during the Migration Window:

- wholesale customers can choose when to lodge a disconnection order with Telstra up to the Disconnection Date; and
- when lodging a disconnection order, the wholesale customer can nominate a date on which the disconnection is to take place (a Customer Requested Date or CRD). The CRD will either become the date on which Telstra commits to disconnect the service (Telstra Committed Date or TCD) or if the wholesale customer's CRD is not available, the wholesale customer will be informed (through Telstra's electronic interfaces) and it can choose another CRD which will be processed in the same way until an agreed TCD is reached, up to the Disconnection Date (by contrast, retail customers are assigned the next available date if their CRD is not available).

This enables wholesale customers to themselves coordinate connection of services to the NBN and the disconnection of services from Telstra's network in a way that maximises service continuity for end users, including by 'future dating' disconnection orders to follow the NBN Co scheduled connection date. Wholesale customers can also use the same process to change the TCD by nominating a later CRD, which allows them to adjust disconnection timing to deal with any delays or changes in the NBN Co connection date.

The draft Migration Plan specifies a limited number of circumstances where a wholesale service may be disconnected automatically without the consent of the wholesale customer, consistent with current industry practice, including:

- where the end user has signed up with another service provider and a request to port the end user's number to the new service provider has been lodged. Under current industry porting

arrangements, number portability requests are treated as 'deemed cancellation' of the existing service; and

- where the Telstra customer cancels a Telstra retail or wholesale telephone service, any retail or wholesale broadband service or the LSS provided on the same line will be cancelled at the same time.

Telstra can only accept service cancellation orders from the existing customer of the copper service. If an end user is currently being supplied with a service on the copper network by one service provider (including Telstra Retail) and decides to migrate to the NBN fibre network with another service provider, the service cancellation can only be lodged with Telstra by the end user in the case of a Telstra retail service or the 'losing' service provider in the case of wholesale service.

The draft Migration Plan provides that if the industry develops a process for 'gaining service providers' to obtain disconnect requests on behalf of end users, Telstra will implement such a process. Telstra cannot unilaterally implement an authority/agency model for its own retail services, except by seeking a variation to the Migration Plan (which requires ACCC approval).

5.3. TELSTRA TO PUBLISH A SCHEDULE OF DISCONNECTION DATES

While NBN Co is primarily responsible for information about the migration process (through the public information campaign), the draft Migration Plan commits Telstra to:

- publishing and keeping up to date a schedule of 'disconnection dates' for rollout regions; and
- providing notifications to retail and wholesale customers who have not disconnected 3 months before the disconnection date in each rollout region.

5.4. MANDATORY DISCONNECTION AT THE DISCONNECTION DATE

The draft Migration Plan provides that on the Disconnection Date for a Rollout Region, Telstra must start disconnecting all premises from the Telstra copper network and HFC Network (for services other than pay TV) Passed by the NBN fibre network in that Rollout Region, with the limited exceptions discussed below. Telstra has 10 business days in which to complete disconnection of all relevant lines. The requirement applies to all premises within a Rollout Region that are Passed by the NBN as at the Disconnection Date, irrespective of whether those premises are currently connected to the NBN or whether the NBN service qualification process shows that it is capable of being connected to the NBN (NBN Serviceable).

The draft Migration Plan sets out the limited exceptions where copper or HFC lines connecting premises in a Rollout Region can continue to be used to provide services after the Disconnection Date:

- NBN Co will notify Telstra of NBN Connection orders which as at the Disconnection Date have not yet been fulfilled. Telstra is to hold off disconnection at those premises to enable NBN Co to clear the backlog (In-Train Orders) for a period of up to 90 business day; and
- a range of retail and wholesale Special Services, for which there will be different Disconnection Dates set by NBN Co depending on the timeframe within which a suitable fibre alternative product becomes available on the NBN (see discussion below).

Consistent with both the MPPs and the TUSMA Agreement, the draft Migration Plan requires that if a copper line over which Telstra is only supplying retail telephone services or wholesale line rental is disconnected at the Disconnection Date but is not yet to be connected to a Telstra NBN service, Telstra must continue to provide 'soft dial tone' for 20 business days, until the premises is connected to the NBN fibre network or until pull through occurs (whichever is earlier). Soft dial tone allows an end user to contact emergency services, the '1100 Dial before you Dig' service, Telstra customer service, and fault reporting phone numbers, but prevents the service from being used to make any chargeable outbound calls or receive any inbound calls.

5.5. SPECIAL SERVICES

The draft Migration Plan sets out the Special Services disconnection process discussed above. Consistent with the definition in the MPPs, a list of Special Services categories is set out in annex to the draft Migration Plan and includes:

- both retail and wholesale Special Services supplied by Telstra; and
- LSS and ULLS services to the extent they are used by other service providers to supply services which are equivalent to the listed Special Services.

Telstra will continue to provide these Special Services in Rollout Regions after all of the other copper services in that region have been disconnected, up until a later date which will be either:

- 36 months after NBN Co develops and publishes a "white paper" specifying an acceptable NBN substitute for a particular class of special services[11]; or
- the date that Telstra otherwise exits the Special Service using its standard product exit processes.

Where a type of Special Service is supplied to both retail and wholesale customers, Telstra must set the same disconnection date for both.

Telstra will not usually know what services are being supplied to premises by a wholesale customer using LSS or ULLS. As such, the draft Migration Plan provides that three months prior to the Disconnection Date in a Rollout Region and then at a time closer to the Disconnection Date for the region, Telstra will require each wholesale customer in the Rollout Region to provide it with a certified list of the premises within the fibre footprint in that Rollout Region where the wholesale customer is using ULLS or LSS services to provide a Special Service and what category the Special Service falls into. This information will be quarantined within Telstra in accordance with the ring fencing requirements which the draft Migration Plan provides are to be developed by Telstra in consultation with the industry and NBN Co and approved by the ACCC.

The draft Migration Plan provides that following the Disconnection Date in a Rollout Region Telstra can re-connect copper lines for the purposes of Telstra or a wholesale customer supplying a Special Service in a class for which the Special Services Disconnection Date has not passed (including where the wholesale customer will be using ULLS and LSS to supply its own services that are equivalent to a Special Service and has certified to that effect). The reconnection process must be equivalent between retail and wholesale services. The copper path has to be rebuilt, which Telstra anticipates will be a mainly manual process. Telstra currently does not have a suitable process to do this and the draft Migration Plan requires Telstra to develop such a process as one of the required Measures for ACCC approval.

5.6. PULL THROUGH REQUIRES WHOLESALE CUSTOMER CONSENT

NBN Co usually will not be able to determine whether pull through will be required prior to its personnel or contractor inspecting the lead-in conduit at each premise when undertaking the connection work. The DAs provide for a process for NBN Co field staff and contractors to check with Telstra the suitability of using copper lines for pull through. The draft Migration Plan provides that when Telstra receives a pull through inquiry, Telstra must inform NBN Co personnel or contractors that if a line used to provide wholesale services is not suitable for pull through if Telstra has not been able to obtain in advance the relevant wholesale customer's consent to pull through. If more than one line in a lead-in conduit is used to provide wholesale services to more than one wholesale customer, Telstra is to inform NBN Co and its contractors that none of the lines is suitable for pull though unless all of the wholesale customers have given their consent.

If the NBN connection cannot be completed on the same day as any pull though occurs, NBN Co is required, except in limited circumstances, to remain on site at the premises until the Telstra service is successfully restored (and Telstra must co-operate with NBN Co to test the service).

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[11] The DAs contain a process where Telstra can notify NBN Co that in its reasonable opinion, the additional functionality proposed by NBN Co would not enable the Special Services to be migrated to the NBN Co Fibre Network, in which case the matter will be referred to an independent assessor for determination. The outcome of the determination will affect the disconnection date for the relevant class of special service).

The draft Migration Plan provides that where NBN Co informs Telstra of a circumstance that prevents NBN Co from being able to complete pull through activities or rectification of the Telstra copper line, Telstra will inform the relevant wholesale customer. As NBN Co and Telstra have not developed the notification process between each other, the draft Migration Plan provides for the notification process between Telstra and wholesale customers to be developed as a Required Measure.

End users can mitigate the effects of service interruption caused by pull through by diverting their telephone services to another telephone service, such as a mobile. The draft Migration Plan provides that Telstra is to make available Easycall call diversion functionality on its copper network on an equivalent basis between retail call services and wholesale line rental and ensure that pull through does not disturb any call forwarding which has been activated on the line or processing any number portability request (for example, related to the newly connected NBN-based service). However, the draft Migration Plan also makes clear that wholesale customers bear the responsibility of explaining the availability of call forward to their own customers.

5.7. USE OF ORDER STABILITY PERIOD

Telstra is concerned that, in the lead-up to the Disconnection Date, Telstra's ability to handle and process retail and wholesale disconnection requests could be jeopardised if Telstra also simultaneously receives other kinds of order requests within the fibre footprint in the same Rollout Region (for example, new orders to move or add new features to existing services). Consistently with the MPPs, the draft Migration Plan therefore allows Telstra to apply a limited period of time in which only orders for disconnection and number portability will be processed for premises within the fibre footprint in the relevant Rollout Region (**Order Stability Period**).

There are a number of safeguards for customers included in the draft Migration Plan:

- the Order Stability Period must be applied equivalently between retail and wholesale services;
- it must be applied for the shortest period reasonably required and in no event be longer than 20 business days prior to the Disconnection Date unless otherwise approved by the ACCC or the Adjudicator;
- Telstra must periodically review the Order Stability Period, including where requested by the Adjudicator, ACCC or a wholesale customer;
- any proposal to change how the Order Stability Period works must be subject to ACCC or Adjudicator approval; and
- wholesale customers can make complaints about the Order Stability Period not being applied equivalently to the Adjudicator.

5.8. LIMITED RIGHT TO USE COPPER AND HFC LINES AFTER DISCONNECTION DATE

The draft Migration Plan requires Telstra not to supply a new copper service to premises where the NBN service qualification process shows that it is capable of being connected to the NBN (it is 'NBN Serviceable'). This means that once premises can be serviced by the NBN, connection to the NBN will always take precedence over the copper network (except in the case of Special Services which cannot yet be supported by the NBN fibre network).

Telstra will also not supply a new copper service to a premises which has been included in a list provided by NBN Co of premises that are passed by the NBN (even if not identified as 'serviceable') and where providing the copper service would require new infrastructure to be built.

5.9. OTHER RECONNECTION EVENTS

There are very few circumstances in which the Migration Plan permits Telstra to reactivate its copper or HFC networks following the Disconnection Date of a rollout region. These are:

- where there is a mass outage on the NBN (which affects a whole region); or

- where NBN Co is subject to an insolvency event or otherwise permanently ceases to operate prior to the Designated Day.

The draft Migration Plan provides that if Telstra reactivates its copper network and commences to re-supply services, it must do so on an equivalent basis for retail and wholesale customers.

5.10. COMPLETION OF PERMANENT DISCONNECTION OF ALL PREMISES BY THE 'DESIGNATED DAY'

Subject to limited exceptions, the draft Migration Plan requires Telstra to have completed permanent disconnection of all of the premises within the NBN network footprint by the Designated Day. This aligns the final Migration Plan outcome with the commitment to final structural separation given in the SSU and as agreed commercially by Telstra with NBN Co under the Definitive Agreements. The concept of 'permanent disconnection' goes beyond ordinary service disconnection and aligns with the final and permanent disconnection of copper lines which is the basis of Telstra's commercial agreement with NBN Co under the Definitive Agreements and the structural separation requirement under the Networks and Services Exemption.

5.11. INFORMATION SECURITY IN RELATION TO NBN CO INFORMATION

In practice, Telstra expects most of the information which it receives from NBN Co under the Definitive Agreements will be the same information which NBN Co makes available to all service providers. This should operate to substantially reduce the risks associated with information provided to Telstra by NBN Co.

Nonetheless, the draft Migration Plan requires Telstra to develop detailed confidentiality/information ring fencing procedures to be approved by the ACCC within 6 months of the Migration Plan being approved. Telstra is already working on these arrangements and expects to be in a position to submit them to the ACCC for approval shortly after acceptance of the Migration Plan (if not before).

5.12. RESTRICTIONS ON TELSTRA FIELD STAFF UNDERTAKING MARKETING ACTIVITIES

The disconnection process does not require Telstra to attend at end user premises to remove copper cabling. The permanent disconnection required to achieve structural separation can be done for active services within Telstra's systems and for ULLS and LSS by de-jumpering cables at the Telstra exchange.

Nonetheless, the draft Migration Plan imposes restrictions on Telstra field staff marketing Telstra retail services, either when attending at end user premises to disconnect wholesale services or to connect NBN services on behalf of NBN Co. Where Telstra attends at premises both to do work on behalf of NBN Co and to install equipment or premises cabling for its own retail customer (i.e. an NBN Co installation model which avoids two truck rolls), Telstra is not restricted from marketing to its retail customer during the course of the Telstra-related work. However, if the customer is also the customer of another service provider, Telstra is not permitted to engage in "win back" activities.

5.13. MAINTAINING CONSISTENCY BETWEEN THE MIGRATION PLAN AND THE MPPS

As required by the MPPs, the draft Migration Plan sets out a number of mechanisms by which the Migration Plan processes or the Migration Plan itself may be changed to maintain consistency with the MPPs, including the general principle of equivalence between disconnection of retail and wholesale processes.

First, if either the ACCC or the Adjudicator, based on the performance record, consider that any processes or systems used by Telstra under the Migration Plan are no longer consistent with the general principles of the MPPs, including equivalence, it may issue a direction requiring Telstra to

prepare a proposal to make changes to bring the process or system back into line. The draft Migration Plan sets out a process for consideration of the Telstra proposal, including industry consultation.

Second, if the ACCC considers that, based on the performance record, a provision of the Migration Plan is no longer consistent with the general principles of the MPPs, including equivalence, it may issue a direction to Telstra requiring to prepare and lodge a variation to the Plan to bring it back into line with the MPPs, which would be then be addressed through the statutory processes, including the ACCC undertaking public consultation.

Third, a wholesale customer may request variation of a process or measure under the Migration Plan. The draft Migration Plan sets out a process for Telstra to consider the wholesale customer's request and if a resolution cannot be reached, the wholesale customer can refer the dispute to the Adjudicator, which will address the dispute through the Adjudicator mechanisms set out in the SSU.

Consistently with the MPPs, the draft Migration Plan provides that neither the ACCC nor the Adjudicator may exercise its powers in a way which shifts any of the key 'goal posts' which form the basis of the disconnection process agreed in the DAs, such as changing the mandatory disconnection date.

The inclusion of these goalposts reflects one of the key purposes of the Migration Plan, which is to provide Telstra with regulatory certainty. As the Explanatory Memorandum to the CCS Bill stated:[12]

> *"The migration plan is a document that Telstra will separately lodge with the ACCC, which will be considered and approved by the ACCC separately from the structural separation undertaking, and that will deal with matters concerning the timing of, and processes involved in, the migration of customers from Telstra's own fixed-line network to the national broadband network.*
>
> *Given that a migration plan would deal with steps to be taken in migrating customers to the national broadband network, it is expected that Telstra would consult closely with NBN Co in the preparation of any migration plan.*
>
> *Once a migration plan is approved by the ACCC, the provisions of that plan will be treated as provisions of the in-force structural separation undertaking."*

Telstra will be required to build, re-configure and run large scale systems which can handle the large volume of orders which have to be disconnected over the course of the NBN rollout. NBN Co and Telstra also will need to build compatible systems, and changes in Telstra's systems will have a knock on effect on NBN Co systems.

Consistent with this objective of the Migration Plan, Telstra considers that there should be reasonable boundaries on the power of the ACCC or Adjudicator to require large scale changes in Telstra systems and processes that have been signed off (either as part of the original Migration Plan or as a Required Measure). The draft Migration Plan therefore applies the same approach of annual monetary caps which applies to the Adjudicator process under the SSU: $1 million per matter as a soft cap beyond which a balancing of costs and benefits is required and an overall cap of $10 million in any year (separate caps apply under the SSU for non-migration related complaints).

5.14. FUTURE DEVELOPMENT OF DISCONNECTION PROCESSES

The disconnection process will involve a number of new processes which have not yet been developed by Telstra. The draft Migration Plan therefore provides a process for Telstra to develop a set of 'Required Measures' within 6 months of the Migration Plan being approved (or longer, if agreed by the ACCC). The Required Measures must themselves comply with the MPPs, must be approved by the ACCC and will be subject to consultation with NBN Co and wholesale customers.

[12] CCS Bill Explanatory Memorandum at page 103.

The set of Required Measures in the draft Migration Plan address the following issues:

- The processes which Telstra will use to notify (and receive notifications from) wholesale customers, where their services are going to be affected by ‘pull through’ activities.
- The processes Telstra will use to mass disconnect all remaining ordinary services (both copper and HFC-based), that have not migrated in a region by the disconnection date.
- How Telstra will build new copper ‘paths’ to premises after they have been permanently disconnected, where it needs to do so in order to provide Special Services to that premises.
- The processes Telstra will use to disconnect Special Services, from time to time, as new products are developed for the NBN that enable these copper services to be migrated.
- The information ring fencing arrangements that Telstra will put in place to ensure that any information it receives from NBN Co (that is not made generally available) cannot be commercially exploited by Telstra to give its retail business units an unfair advantage.

6. MATTERS THE ACCC MUST TAKE INTO ACCOUNT IN DECIDING WHETHER TO APPROVE THE DRAFT MIGRATION PLAN

The Minister published a set of 'Migration Plan Principles' on 23 June 2011 to direct Telstra and the ACCC about the specific issues and matters that must be addressed in any draft Migration Plan in order for it to be acceptable. The ACCC must accept Telstra's draft Migration Plan if it complies with the Migration Plan Principles, and must reject the draft Migration Plan if it fails to do so.

The objects of the Migration Plan Principles are to establish principles that provide for:

- timely and efficient disconnection of wholesale and retail services by Telstra as part of the migration process (i.e. as the NBN fibre network is deployed); and
- provide for equivalence in the disconnection processes that Telstra will implement for its wholesale customers and retail business units.

The following table describes how the draft Migration Plan addresses the general principles set out in the MPPs.

General Principle		***How addressed in draft Migration Plan***
General Principles in Clause 8		
1.	The migration plan must provide for disconnection of fixed-line carriage services supplied to premises in a fibre rollout region to occur in a way that:	
(a)	ensures the efficient and timely disconnection of wholesale carriage services and retail fixed-line carriage services from a separating network; and	• Telstra is committing to use its Business as Usual disconnection processes for disconnection during the Migration Window. These processes, which are already well-established within the industry, and work well, allow the customer to nominate the disconnection date that best suits them. Therefore, with the limited exceptions discussed below, decisions about the timeliness of disconnection before the Disconnection Date within each Rollout Region will be made by the retail or wholesale customer. • During the Migration Window, Telstra generally will disconnect services in accordance with the timetable selected by the retail or wholesale customer. If the Telstra wholesale service is disconnected after the date to which Telstra has committed (which, as discussed below, will generally be the date chosen by the retail or wholesale customer for disconnection), the wholesale customer is entitled to claim a rebate of any rental/access charges. The rebate also provides Telstra with an economic incentive to disconnect in a timely manner. • Telstra has 10 business days to disconnect services which have not already been disconnected as at the Disconnection Date in a Rollout Region. This Disconnection Window is consistent with the period of time for disconnection to which NBN Co agreed in the Definitive Agreements. This is a reasonable period of time for Telstra to complete the disconnection of the remaining services. An NBN Co Rollout Region may cover one or more Telstra Exchange Serving Areas (or parts thereof) and the disconnection process could involve thousands of lines. While it is anticipated

General Principle	How addressed in draft Migration Plan
	the efforts of service providers (including funded through the TUSMA Agreement) should have achieved migration of most or a substantial proportion of end users in a Rollout Region, Telstra may still face a significant task in disconnecting the remaining lines. Telstra will need time, as set out in the draft Migration Plan, to "wash" In-train Premises and wholesale customer certifications of ULLS and LSS lines over which relevant Special Services are provided against the remaining base of connected services to identify those premises to which copper services can continue to be provided. Once having identified the population of lines to be disconnected, Telstra can then proceed with disconnection of active services within Telstra's systems, which should be a relatively straightforward task. However, ULLS and LSS lines will require attendance by Telstra personnel at the relevant exchange(s) in the Rollout Region to undertake de-jumpering work.

General Principle	*How addressed in draft Migration Plan*
(b) to the extent it is in Telstra's control, minimises disruption to the supply of fixed-line carriage services; and	• Minimising disruption to the supply of fixed-line carriage services is stated to be an object of the Migration Plan in accordance with which Telstra, to the extent within its control, is to implement and manage disconnection related to Migration. The draft Migration Plan extends the same objective to Telstra's management of local number portability associated with Migration; • The draft Migration Plan provides wholesale customers with the tools to manage the sequencing and timing of disconnection with the NBN Co connection processes to minimise disruption: wholesale customers can choose when to lodge disconnection requests during the Migration Window and can choose a preferred disconnection date (see below). Retail customers can also choose when to disconnect their Telstra retail services relative to the timing of NBN connection; • There will be service disruptions during pull through. However, reflecting the DAs, it is up to the end user (Telstra retail customer or retail customer of a Telstra wholesale customer) whether to allow pull through as a means of connecting them to the NBN and therefore whether to face service interruption in their copper service during the act of pull through. Wholesale customers have a second layer of protection against service interruption in that the draft Migration Plan provides pull through cannot occur unless they have consented (including where another wholesale line is to be used for pull through). • If a wholesale customer has consented to pull through, there will be safeguards to deal with longer than anticipated NBN connection due to problems with pull through. NBN Co is subject to requirements under the DAs to take steps to provide temporary or reconnected services on the same day as pull through occurs if the NBN connection cannot be established.

General Principle	How addressed in draft Migration Plan
	These NBN Co responsibilities cannot be addressed in the Telstra Migration Plan as only Telstra is bound by the Plan. However, the draft Migration Plan requires Telstra to inform wholesale customers when an event which has prevented NBN Co completing the connection or reinstatement of the Telstra cabling (**Pull through Exception Event**) has occurred, which will allow wholesale customers to manage longer service interruptions with their end users. • End users can use call forwarding on their Telstra services (retail or wholesale standard telephone services) to redirect calls to mobiles or other lines during the period of the service interruption caused by pull through. The draft Migration Plan commits Telstra to make that facility available to wholesale customers of the voice wholesale line rental service.
(c) to the greatest extent practicable, gives wholesale customers autonomy over decisions about the timing of	• The draft Migration Plan provides that, during the Migration Window, wholesale customers can choose when to lodge

General Principle	How addressed in draft Migration Plan
disconnection from a separating network and sequencing of that disconnection with connection to the NBN Co fibre network to enable them to minimise disruption to the supply of carriage services when connecting to the NBN Co fibre network; and	disconnection requests during the Migration Window. • The draft Migration Plan provides that when lodging a disconnection request, the wholesale customer can nominate a date on which the disconnection is to take place (a Customer Requested Date). If the wholesale customer's CRD is not available, the wholesale customer will be informed (through Telstra's electronic interfaces) and it can choose another CRD which will be processed in the same way (by contrast, retail customers are assigned the next available date if their CRD is not available). Most of the wholesale customer CRDs accepted first time around under the current process. • This process ensures that, even in the few cases where the wholesale customer's first preference is not available, the wholesale customer retains control over the disconnection date and is in a position, depending on the NBN Co processes, to adjust the NBN connection date of the first preference date for Telstra disconnection is not available. • The situations specified in the Migration Plan where wholesale customers do not control disconnection are either consistent with current industry requirements and practice – the dependency of retail and wholesale DSL services and LSS on a voice line connection and deemed disconnection with local number portability – or with the MPPs – the mandatory disconnection at the 18 month mark in each Rollout Region.
(d) to the greatest extent practicable, provides for wholesale carriage services supplied by Telstra over a separating network to be disconnected from that network in an equivalent manner to the disconnection of corresponding fixed-line carriage services supplied by Telstra to itself over	• Equivalence between disconnection of retail and wholesale services is an object of the draft Migration Plan. • The Business as Usual disconnection processes specified in Schedule 1 of the draft Migration Plan for use during the Migration Window provide for equivalent treatment of service

General Principle	*How addressed in draft Migration Plan*
that network in that rollout region.	requests for disconnection of retail and wholesale services, with limited exceptions which reflect the different channels or interfaces through which retail and wholesale customers lodge requests (e.g. the vast majority of wholesale requests are lodged electronically and flow directly in to the Telstra operational support systems whereas most retail requests are received manually have to be keyed into the Telstra systems before flowing into the Telstra OSS). Once retail and wholesale disconnection requests pass into the Telstra OSS, then, as specified in Schedule 1, they are processed on a customer agnostic basis. • There are a number of disconnection-related requirements for the NBN Migration for which Telstra has no current processes because they are unique to the NBN environment (Required Measures). The draft Migration Plan provides that Required Measures must be developed in accordance with the MPPs, including equivalence. Compliance with the equivalence principle will be achieved through two means: first, Telstra, as specified in development plans to be lodged with the ACCC, will be consulting with wholesale customers in developing these processes, and second, Telstra is to lodge the final processes for approval by the ACCC. • Any Order Stability Period which is applied must be applied in an equivalent manner between retail and wholesale services. • The Special Services provisions of the draft Migration Plan permit that as long as Telstra continues to use its copper network to provide Special Services (retail and wholesale) wholesale customers can also continue to use ULLS and LSS to provide services that are equivalent to those Special Services. Wholesale customers will be required to certify to Telstra the relevant class of Special Service for which the ULLS and LSS will be used.

General Principle	How addressed in draft Migration Plan
	Information security rules will apply to this information to prevent its disclosure to and use by retail personnel. As provided in the MPPs, the draft Migration Plan includes an exemption for Contracted Special Services which will allow Telstra to use its copper network in respect of existing retail contracts under which Telstra could face significant liability for disconnection. There are only a limited number of such contracts with not more than 100,000 services in operation. Telstra has no capacity to expand the class of Contracted Special Services. Telstra is also not able to extend the period of its contractual obligations without the consent of NBN Co, which ensures that Telstra as an retail service provider will not have any advantage as a result of these Contracted Special Services. Given the contract term of Telstra's current wholesale contracts and the timing of disconnection for Special Services, access seekers should not face similar issues with their downstream retail contracts. • The draft Migration Plan also provides that where Telstra is permitted to reconnect copper services beyond the Disconnection Date (e.g. a mass service outage on the NBN), Telstra will do so on an equivalent basis between retail and wholesale. • Finally, if a wholesale customer considers a process is not or is no longer consistent with equivalence, the wholesale customer can make an equivalence complaint. If not resolved with Telstra, the complaint can be escalated to the Adjudicator. The ACCC also has power to act where it considers that a disconnection process does not or no longer complies with the general principles, including equivalence. Within certain parameters specified in the draft Migration Plan, the Adjudicator or the ACCC can require Telstra to make specified changes to its processes to achieve equivalence. There is also a separate process by which the ACCC may require Telstra to lodge a variation to the Migration Plan to

General Principle	How addressed in draft Migration Plan
	rectify any non-conformity between the Plan and the MPPs.
(2) For the purposes of paragraphs (1)(b), (c) and (d), the migration plan must require Telstra to have in place reasonable policies and business practices relating to disconnection from a separating network.	• The draft Migration Plan provides for Telstra to use the current Business as Usual disconnection processes to process requests for disconnection from retail and wholesale customers during the Migration Window. These processes are well established between Telstra and wholesale customers and, as the Explanatory Memorandum to the MPPs notes, use of Business as Usual processes will limit the extent of system and processes changes and costs which Telstra and wholesale customers will face. • Many of the other processes required for the Migration Plan are specific to the NBN Migration and will need to be developed by Telstra as Required Measures. The draft Migration Plan provides that the Required Measures must comply with this principle and the ACCC will be able to make that assessment when it is considering whether to approve the Required Measure. • Consistent with the MPPs, the draft Migration Plan provides that existing processes are subject to directions from the ACCC or the Adjudicator requiring changes where they are no longer considered to be consistent with the general principles. These principles set out considerations which would go to whether practices and business policies could be considered as reasonable, including efficiency and equivalence.
(3) The policies and business practices referred to in subsection (2) must provide for Telstra to facilitate, to the extent it is reasonably in Telstra's control to do so, the management by wholesale customers of the migration of their customers in a way that minimises: (a) the period of any service outage; and	• See comments above on the wholesale customer's ability to select the CRD for disconnection and therefore to co-ordinate with the NBN Co connection date. • The draft Migration Plan includes minimising the time taken by Telstra to process local number portability requests as an object of the Plan. The draft Plan also provides for number portability

General Principle	How addressed in draft Migration Plan
(b) the time taken to complete local number portability processes and any ancillary procedures.	requests to be processed in accordance with the existing industry code and arrangements for number portability, including the current timeframes for processing of porting requests.
General Principles in Clause 23	
The migration plan must provide for the equivalent treatment of wholesale customers and retail business units in the implementation of the processes for disconnecting carriage services from a separating network at premises in each fibre rollout region.	• As noted above, the draft Migration Plan provides for: – retail and wholesale disconnection requests made during the Migration Window to be processed using the equivalent Business as Usual processes specified in Schedule 1 of the draft Migration Plan; – by using Business and Usual processes, wholesale customer will have flexibility to select the 'requested date' for disconnecting their services, providing them with an equivalent ability to coordinate the timing of connection and disconnection; – Required Measures to be developed by Telstra and approved by the ACCC consistent with this general principle; – the ACCC and the Adjudicator have the power to require changes to processes under the Migration Plan if they consider a process not to be or to no longer be consistent with this principle; – wholesale customers to make complaints about non-equivalent application of the order Stability period to the Adjudicator; – wholesale customers to request changes in the Migration Plan processes, including if they consider processes are not equivalent, and to escalate disputes to the Adjudicator; and – the ACCC to require Telstra to vary the Migration Plan when

General Principle	***How addressed in draft Migration Plan***
	the ACCC forms the view that a provision of the Plan is no longer consistent with this principle. • Telstra is also required to develop information security rules to ensure Telstra retail business units do not have privileged access to NBN Co confidential information compared to other suppliers which would give them an unfair competitive advantage in the process of moving customers from the Telstra copper network and HFC network to the NBN fibre network.

Annex 1: Telstra's organisational arrangements under the SSU – Separation of the business units

The purpose of this Annex is to explain the basis of the exemptions to the staff ring fencing requirements which Telstra has specified in the SSU and the safeguards which will apply in respect of those exemption functions to ensure Telstra does not gain an unfair competitive advantage over wholesale customers.

Exceptions to the prohibitions on work for other separated business units.

Under the core prohibitions in the SSU:

- employees who work for a wholesale business unit are prohibited from undertaking any work for a retail business unit;
- employees who work for a retail business unit are prohibited from undertaking any work for either a wholesale business unit or a network services business unit; and
- employees who work for a network services business unit are prohibited from undertaking any work for a retail business unit.

The exceptions in the SSU to these staff ring fencing rules fall into the following categories:

- **clarifying the scope of the prohibition**: clarifying in particular that a separated business unit is not performing work for another business unit merely by handing over work to the other business unit so that the other business unit can perform its proper function. For example:
  - *Handover of customer complaints*: Telstra business units receive customer complaints and queries from various sources and end customers cannot be expected to be able to identify the source of the issue that has given rise to their complaint or query. If, for example, a retail business unit receives a complaint and is able to determine that the issue should properly be resolved by another business unit, then the retail business unit employee is not performing work for that other business unit by merely handing that complaint or issue over to the appropriate business unit for resolution;
  - *Proper resource planning:* An example of this exemption may occur if a retail business unit experiences an IT system problem, this can cause a backlog of service activation orders. Currently there is a process by which the retail business unit can provide the network services business unit with advanced notice of the fact that orders will be erratic or delayed or that there will be a spike in orders at some future time after the IT system issues are resolved, which will in turn impact upon the network services business unit's resourcing to fulfill those orders. Information falling within this exemption may flow the other way also (i.e. from a network services business unit to, for example, a retail business unit).This exemption is justified on the basis that communication between the separated business units should be permitted where an issue in one business unit will have a flow on effect on the budget and resourcing decisions that another separated business unit will need to make. As mentioned above, in circumstances where commitments such as information security and information equivalence become relevant, they will apply notwithstanding this exemption from the application of the ring fencing arrangements;
- **exceptional events**: Coordination between the separated business units is always permitted if the work involves responding to natural disasters, emergencies and mass service disruptions, or if the work is required for reasons

of national security or to meet the requirements of a law enforcement agency. Similarly, separated business units are permitted to work together in supplying services in relation to disability products, emergency call services, payphones and payphone carriage services;

- **preserving Telstra's ability to comply with existing legislation**: Separated business units are permitted to coordinate with each other to meet the requirements under employment or workplace safety legislation or to fulfill requirements under legislative instruments, industry standards or industry codes;
- **avoiding duplication and unnecessary technical or operational inefficiencies where Telstra gains no unfair competitive advantage from retaining the integration**: The SSU names the following existing examples in which it is accepted that Telstra gains no unfair competitive advantage from the function being housed in the one business unit rather than being duplicated across separated business units:
  - *Integrated Public Number Database (IPND) uploads and error management:* When a wholesale customer wishes to have a service number uploaded to the IPND, the wholesale business unit initiates the process. However, a retail business unit receives all error messages relating to IPND uploads. Human intervention is required because the system itself cannot distinguish between wholesale and retail errors. The retail business unit identifies which errors relate to wholesale processes and directs these error messages to a generic Telstra wholesale mailbox for resolution. There is no transfer of information which is confidential to the other separated business unit, but it would be inefficient for error reports to be sent to both retail and wholesale and for retail and wholesale to have to duplicate the sorting process;
  - *Carrier verification requests for end users:* Telstra receives a low volume of calls to retail business units from end users who have enquiries about who their other service providers may be, because they can't remember, were not aware their service has been legitimately changed to another provider (for example, by someone else in their household) or because they are seeking to verify their provider details where they suspect they may have been slammed. When this occurs, a Telstra retail business unit employee will contact a Telstra wholesale business unit employee and will hand the end customer over to the Telstra wholesale business unit employee to obtain the relevant information. When this occurs the only information exchanged between the separated business units is the limited information required to properly identify the customer;
  - *Billing name and address information:* A wholesale business unit may supply billing name and address information to a retail business unit upon request where an end user has used an override code to access retail services and (because the end user is not a Telstra retail customer for the underlying service) the retail business unit requires this information in order to bill the end user for those retail services; and
  - *Churn and LNP related processes:* A level of co-operation is required between retail and wholesale business units to ensure customers can transition from being retail to wholesale customers without unnecessary delays. For example wholesale may identify wholesale work orders which have remained un-actioned for an unusually long period of time or which may contain errors and which may be hindering the completion of the churn. When these are identified, the wholesale business unit will alert the retail business unit to the issue and request that the retail business unit rectifies the error in order to cease the delay.

To prevent any of the above scenarios leading to a situation where information is shared inappropriately between separated business units, the information security measures set out in the SSU apply to information passed between the separated business units in these circumstances. In addition to these detailed exemptions, the SSU also includes a mechanism for the ACCC to approve further exemptions in future where Telstra can demonstrate that it is not technically or operationally efficient for the functions to be performed independently by separated business units. This is provided Telstra identifies the safeguards that would apply to ensure that Telstra receives no unfair competitive advantage from one separated business unit performing the work for the other separated business unit:

- **Purely administrative or functional tasks**: In keeping with the principle that separation of the business units should not introduce unnecessary inefficiencies in the way that Telstra provides services, the SSU contains an exemption which permits employees of the network services business unit and employees of the wholesale business units (but not employees of the retail business units) to perform tasks for the other separated business units where the tasks are predominately of a process-orientated, functional or clerical nature. This exemption is aimed at recognising that if the task involves no exercise of discretion on the part of the employee and would not have any material impact on the way retail provides services to its customers relative to the way wholesale provides services to its customers (in other words the equivalence of outputs of retail versus wholesale) then the business unit should be permitted to perform the task. This exemption will cover examples such as that described in the IPND uploads scenario above, where a system output requires human intervention to assimilate the facts and redirect an error file to the appropriate business unit, but the employee completing the process is performing a merely administrative task of sorting through error files and redirecting them as appropriate.
- **Customer Excellence**: One of the main pitfalls of the international experience of structural or functional separation is that, particularly in the transitional stages of separation, separation can have a detrimental effect on customer service and the overall customer experience. To avoid the same pitfalls the SSU contains a specific customer excellence exception which clarifies that it will not be a breach of the undertaking if an employee makes a bona fide effort to resolve an issue for a customer. In practice this means that if a Telstra customer has approached a Telstra employee and asked for resolution of a particular issue, the Telstra employee will be permitted to resolve the issue or ensure that the customer is directed to the appropriate other part of Telstra to have the issue resolved without breaching the SSU. Safeguards around this exemption are that service technicians cannot market to end users of wholesale customers who also are not Telstra retail customers or in respect of 'dual customers', undertake any proactive win back or other marketing activity to promote alternative Telstra products to the wholesale customer's service.

Annex 2: Detailed Assessment of SSU against SSU Guidance Criteria

SSU Guidance criteria	Telstra's view on how the SSU meets the criteria
The Government's policy objective of improving the accessibility and quality of broadband services for consumers in Australia, including those in regional, rural and remote areas	• In the longer term, Telstra's commitment to structurally separate applies across the NBN fibre footprint, which the Statement of Expectations requires to cover 93 per cent of Australian premises, will place Telstra and its competitors on the same footing as service providers across Australia. NBN Co is also to offer nationally averaged prices on its network which should provide other service providers with the opportunity and incentive to compete in regional and rural areas where Telstra is currently the only or main provider. • In the interim, Telstra's commitment on equivalence and transparency will provide service providers with the opportunity to compete across Telstra's network, including particularly: ○ the commitment to a retail minus approach to pricing of ADSL 2+ services, which will be adjusted in line with shifts in Telstra retail prices and costs of retail sales; and ○ the commitment to wholesale any DSL upgrades.
The Government's support for a form of structural separation whereby Telstra will progressively migrate fixed-line carriage services that it supplies to retail customers to the national broadband network as that network is rolled out	The SSU and the Migration Plan are designed to implement and be consistent with the Definitive Agreements between Telstra and NBN Co which provide for the incremental disconnection of the Telstra Copper Network and broadband capability on the HFC network as the NBN fibre network is rolled out. The Interim Equivalence and Transparency measures will remain in place until the Designated Day, which is intended as the date by which all or most of the NBN fibre network will be deployed. The Minister can extend the Designated Day of the NBN rollout takes longer, in which case the Interim Equivalence and Transparency measures will be automatically extended. The Migration Plan continues until the last Rollout Region is completed and the Migration Window for it expires, whether or not the Designated Day is extended by the Minister.
The expected distribution of the long-term economic benefits for different types of consumers in different geographic areas that would occur as a result of the undertaking coming into force	The Government has identified the long term economic benefits of a fibre to the premises as being superior to those realised through other technologies and as a major justification for the NBN. *The Government's central NBN objectives are to deliver significant improvement in broadband service quality to all Australians, address the lack of high speed broadband in Australia, particularly outside of metropolitan areas, and reshape the telecommunications sector. The Government recognises that access to affordable, high speed broadband is essential to the way Australians communicate and do business. It will drive productivity, improve education*

SSU Guidance criteria	Telstra's view on how the SSU meets the criteria
	and health service delivery and better connect our cities, regional, rural and remote communities.[13] Telstra's commitment in the SSU to structurally separate across the NBN fibre footprint will help facilitate the rollout of the NBN and therefore delivery of the Government's anticipated benefits of fibre to the premises technology can be realised across the 93 per cent of premises which the Government requires the NBN fibre footprint to cover. The Government also anticipates that: • the wholesale-only model of the NBN; • the statutory requirements of non-discrimination which apply to NBN Co's supply of services; • the Government's policy that NBN Co will be principally confined to layer 2 services; • NBN Co's approach of nationally averaged pricing, should promote vigorous competition and product innovation across the NBN fibre network in different geographic areas and between different customer groups, such as residential and business customers. Telstra and the industry await further details of NBN Co's pricing and products, which will influence the scope, extent and shape of competition, but as NBN Co is subject to non-discrimination obligations, Telstra will be in an equivalent position to other service providers competing on the NBN. Telstra's commitments to Interim Equivalence and Transparency measures provides the opportunity for competition between Telstra and its competitors in the lead up to the commissioning of the NBN in each area, which then should 'roll onto' the NBN fibre network.
The conduct that would be authorised under section 577BA of the Act as a consequence of the ACCC's acceptance of the undertaking	This has been addressed by a separate paper to be provided to the ACCC.

[13] Government Statement of Expectations: www.dbcde.gov.au/__data/assets/pdf.../Statement_of_Expectations.pdf, at page 1.

SSU Guidance criteria	Telstra's view on how the SSU meets the criteria
or the undertaking coming into force	
Whether the undertaking provides for the ACCC to be given written copies of all contracts, arrangements or understandings entered into by Telstra in order for it to comply with the undertaking.	Telstra has included a clause to this effect which deals with any agreements which are entered into after the date of lodgment of the SSU. Telstra notes that, separately from this provision, it has provided the ACCC with the Definitive Agreements in accordance with section 577BA(3).

Whether the undertaking requires Telstra to implement a governance framework that:
 	
• ensures appropriate oversight by Telstra of its compliance with the undertaking; and
 	
• requires regular reporting by Telstra to the ACCC on Telstra's compliance with the undertaking; and
 	
• provides that the ACCC may consult with wholesale customers and other stakeholders about Telstra's compliance with the undertaking; and
 	
• provides that the ACCC
	• Telstra is required to publish a quarterly report based on the Telstra Economic Model (**TEM**). Telstra has committed to use TEM as the primary management accounting system for Telstra's own business planning purposes – including to set out its revenues and costs on a per unit basis for the regulated services (ULLS, LSS, WLR, LCS, PSTN OTA and wholesale ADSL), and for comparable retail products. Reported costs will include operating costs, depreciation and a return on capital. The TEM report also will show EBIT for each product and "economic return" (revenue less all costs, including a return on capital). This report will show the extent to which wholesale pricing for wholesale customers (represented by Telstra wholesale revenue for each product) is equivalent to the effective internal wholesale price faced by Telstra's retail business (represented by Telstra's internal costs for the same network requirements).
	
	• Telstra is required to provide a quarterly report on performance against the Equivalence and Transparency Metrics, including to identify variances greater than the minimum allowable amount adverse to wholesale customers, in which case Telstra is to provide a confidential report which explains the variation and sets out any rectification measures Telstra proposes to undertake. This reporting will allow the ACCC to assess Telstra's compliance with the non-price equivalence commitments on a quarter by quarter basis;
	
	• Telstra is required to provide the ACCC with a copy of the annual compliance report provided to the Audit Committee of the Board by the Director of Equivalence. This report is required, amongst other things provide the ACCC with information relevant to this criteria, including:
	
	  • compliance by Telstra with the provisions of the SSU during the reporting year; and
	
	  • steps Telstra has taken to rectify any identified non-compliance in the current or previous

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may, for the purpose of such consultation, disclose information provided to it by Telstra [in regular compliance reports] (other than information that is commercially confidential); and
 	
• provides assurance to wholesale customers that Telstra is meeting its obligations under the undertaking;
	years.
	
	• The SSU provides for more extensive reporting on compliance with the SSU in Telstra's annual report.
	
	• The SSU provides that the ACCC may release non-confidential versions of both the quarterly performance reports and the annual reports and consult about them.
	
	• The SSU provides wholesale customers with assurance that Telstra is meeting its obligations under the undertaking because:
	
	  • the above measures provide the ACCC with extensive transparency into Telstra's internal operations, which is substantially greater than under current Operational Separation, and will require that Telstra disclose and explain to the ACCC instances of non-compliance;
	
	  • subject to legitimate confidentiality restrictions, the ACCC can consult wholesale customers on Telstra's compliance reporting.

Whether the undertaking provides for the following matters relating to transparency and equivalence in relation to the supply by Telstra of regulated services:	
• Measures to provide sufficient transparency to enable the ACCC to provide assurance to stakeholders that the undertaking provides for equivalence in relation to terms and conditions relating to price or a	• Telstra is required periodically publish a report based on the Telstra Economic Model (**TEM**). Telstra has committed to use TEM as the primary management accounting system for Telstra's own business planning purposes – including to set out its revenues and costs on a per unit basis for the regulated services (ULLS, LSS, WLR, LCS, PSTN OTA and wholesale ADSL), and for comparable retail products. Reported costs will include operating costs, depreciation and a return on capital. The TEM report also will show EBIT for each product and "economic return" (revenue less all costs, including a return on capital). This report will show the extent to which wholesale pricing for wholesale customers (represented by Telstra wholesale revenue for each product) is equivalent to the effective internal wholesale price faced by Telstra's retail business

SSU Guidance criteria	Telstra's view on how the SSU meets the criteria
method of ascertaining price	(represented by Telstra's internal costs for the same network requirements). • Where a TEM report shows that a wholesale price faced by wholesale customers is not within +/-5% of the effective internal wholesale price faced by Telstra for certain wholesale service bundles, Telstra will be required to submit to the ACCC a "substantiation report" setting out an explanation for this. Future ACCC regulated pricing reviews also could be used to better align Telstra's internal wholesale prices with wholesale prices charged to wholesale customers.

• Organisational arrangements within Telstra that promote interim equivalence and transparency, including arrangements and measures set out in Schedule 1	The SSU sets out organisational commitments, including measures which comply with Schedule 1 of the SSU Guidance, which will promote interim equivalence and transparency by:
	• clearly delineating the Required Functions of the retail business units, the wholesale business units and the network services business units and providing that one kind of business unit cannot undertake a function which is the Required Function of another kind of business unit. In particular, the SSU requires a separation between, on the one hand, the staff and functions of a retail business unit and, on the other hand, the staff and functions of a wholesale business unit and a network services business unit;
	• providing that retail business units cannot perform functions which are key to the operation of the wholesale business unit, such as wholesale pricing, or which are key to the supply of retail and wholesale services on an equivalent basis, such as network planning and functions Telstra performs for the industry, such as churn and portability;
	• protecting the 'customer agnostic' character of the services provided by the network services business unit by:
	  • specifying the work and circumstances in which it can do that work for a retail business unit beyond the Required Functions of service activation and fault repair (which are to be provided on an equivalent basis in accordance with the Interim Equivalence and Transparency measures); and
	  • restricting field staff from undertaking marketing activities when the end user is a customer of a wholesale customer (whether also a customer of a Telstra retail service);
	• providing for employees of the wholesale business unit and the network services business unit to be rewarded for performance only on the performance of their business unit, which in turn is

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	or involves performance against the Interim Equivalence and Transparency measures; and • requiring Telstra to maintain records of employees moving between separated business units, which can be inspected by the ACCC; • requiring the location of the wholesale business unit within physically secure facilities, the head of wholesale to be organisationally equivalent to the head of the retail business units and the wholesale business unit to be adequately resourced to meet its obligations under the SSU.
• Measurable standards for the equivalent supply of regulated services to Telstra's wholesale customers and retail business units and enforcement of those standards, including through service level guarantee payments	The SSU sets out Interim Equivalence and Transparency measures for each Regulated Service and certain other performance requirements, including availability of the specific wholesale BSS interfaces. Specified rebates are payable automatically in the event of a performance level adverse to wholesale customers outside the permitted variance level (in general 2%). Wholesale customers are free not to participate in the SLA rebate scheme under the SSU and instead to rely on other contractual or statutory remedies, in which case a rebate would not be payable under the SSU. If a wholesale customer does participate in the SLA rebate scheme, the rebate under the SSU is the sole remedy in respect of performance matters. A wholesale customer participates in the SSU rebate scheme by signing a form of agreement which is annexed to the SSU.
• Effective measures to protect from unauthorised disclosure or use confidential information and commercially sensitive information that Telstra holds in relation to Telstra's wholesale customers, or in relation to customers of those wholesale customers or other end-users of services supplied by those wholesale customers, which Telstra obtains for the purposes of, or in the	• The SSU commits Telstra to implement information security rules which prohibit the disclosure of Protected Information by the wholesale business unit to a retail business unit and restricts the disclosure of Protected Information to the network services business unit on a 'need to know' basis; • The definition of Protected Information includes not only information which would be routinely treated as confidential information (e.g. information provided by the wholesale customer about its end users) but also information derived from information supplied by a wholesale customer or otherwise obtained by Telstra in the course of Telstra supplying wholesale information which, while not explicitly identifying the wholesale customer, would allow the wholesale customer to be identified; • Telstra has committed to compliance measures in relation to Protected Information, including implementing access controls in its information systems, ensuring that employees who transfer to a different separating business unit comply with their obligations in respect of Protected Information, the application of the Protected Information requirements as a safeguard where

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course of, supplying wholesale carriage services to those wholesale customers	the SSU authorises separated business units share functions and compliance training of Employees on the Protected Information measures. • In addition to restrictions on Protected Information, the retail business unit is not permitted to have access to aggregated wholesale information at a sub-national level unless the ACCC approves and the same information is made available to wholesale customer.
• Equivalent notification to Telstra's wholesale customers and Telstra's retail business units of matters relating to Telstra's networks which affect the delivery or operational quality of regulated services	The SSU commits Telstra to provide notifications to Wholesale Customers in relation to: • planned events ("**Planned Event Notification**"); • availability of ADSL capability ("**ADSL Availability Notification**"); • exchange service area information ("**ESA Information Notification**"); • major service impacting network incidents ("**Major Network Incident Notification**"); • other general service or provisioning impacting matters relating to operational support systems ("**OSS Announcements**"); and • disaster recovery plan information ("**DISPLAN Notification**"). Schedule 4 sets out the process for notifications, including timeframes.
• Effective mechanisms for the resolution of equivalence disputes between Telstra and its wholesale customers	The dispute resolution measures which the SSU requires Telstra to establish will be effective because: • the accelerated investigation process establishes an internal 'first line' dispute process with defined stages and tightly specified timeframes in which Telstra must comply. Wholesale customers also have a unilateral right to escalate to the external dispute process if they are not satisfied by the outcome of the internal process; and • Adjudicator scheme provides wholesale customers with access to an independent, technically operationally experienced person to definitively resolve disputes over equivalence.

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• Measures to ensure that systems used for wholesale customers in relation to billing information, ordering, provisioning, fault reporting and fault rectification provide outcomes and functionality that are equivalent to the outcomes and functionality provided by systems used for those matters by Telstra's retail business units	Telstra makes specific commitments to utilise systems and processes which will deliver equivalence in order management for Regulated Services and Comparable Retail Services and in respect of services without a Comparable Regulated Service, to meet the relevant Equivalence and Transparency Metrics. These commitments will be enforceable through the SLA rebate scheme and/or by the Adjudicator directing remedial action to be taken. In addition, the ACCC make take action to directly enforce these obligations in cases of systemic breaches of these commitments.
If, as part of the mechanisms for the resolution of equivalence disputes set out in the undertaking, the undertaking provides for the establishment of the independent telecommunications adjudicator—whether the undertaking requires the independent telecommunications to have the organisational and governance arrangements set out in Schedule 2	The SSU requires Telstra to establish the independent telecommunications adjudicator and the requirements specified in the SSU comply with the organisational and governance arrangements set out in Schedule 2 of the SSU Guidance, including: • the Adjudicator being established as a company limited by guarantee with a constitution to include the matters specified in Schedule 2 and to be approved by the ACCC; • a Charter of Independence to include the matters specified in Schedule 2 and to be approved by the ACCC; • the appointment of the person selected as the Adjudicator to be approved by the ACCC. In addition to the matters required by Schedule 2, the SSU provides for the following additional safeguards to ensure the independence of the Adjudicator and the effectiveness of the dispute resolution process: • appointment of a probity advisor to the board of directors of the company; • a requirement that the constitution, to the extent permitted by the Corporations Law, limit the functions, powers and role of the board and Telstra as member of the sole company to matters

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	relating to the establishment, maintenance and administration of the Adjudicator scheme as a corporate entity; • a requirement that the constitution, to the extent permitted by the Corporations Law, provide for the Charter of Independence to prevail over the constitution; • provision in the Charter of Independence for the ACCC to issue directions to address any threats to the independence of the Adjudicator; • provision in the Charter of Independence for the ACCC to rule on any alleged conflicts of interest faced by the Adjudicator; • a requirement in the Charter of Independence for the Adjudicator not to provide the Board (or any Board member) with information about a dispute or to formally or informally consult with or seek guidance from the Board (or any member of the Board) about a dispute.
The Government's statement of expectations given to NBN Co dated 17 December 2010	The Government's clear preference for structural separation to be achieved by way of the Definitive Agreements between NBN Co and Telstra reflects its view and the view of NBN Co that this approach best achieves the objectives of the Statement of Expectations by maximising the migration of customers to the NBN fibre network, through Telstra's disconnection obligations supported by restrictions on Telstra's use and disposal of its copper or HFC network, and network preference commitments.
NBN Co's Corporate Plan 2011-2013 dated 17 December 2010	In developing the Corporate Plan, NBN Co made key assumption "that the Telstra Definitive Agreements will be completed in accordance with the terms of the Financial Heads of Agreement and result in clarity of the decommissioning of existing networks and migration of existing Telstra End Users onto the NBN Co platform". This assumption went to assumptions about costs, revenues and risks in the NBN Co business case. Approval of the SSU and Migration Plan are conditions precedent to the DAs.
The governance and operating framework for NBN Co, established by the *National Broadband Network Companies*	The governance and operating framework is relevant to the extent that the wholesale-only model adopted by the Government for the NBN will promote competition across the NBN as Telstra incrementally disconnects its copper network and HFC Network in accordance with the SSU and the Migration Plan, in particular:

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Act 2011 and the *Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011*.	• the obligation on NBN Co to provide wholesale services on a non-discriminatory basis between service providers, including between Telstra and other service providers; • the scope for NBN Co to cross subsidise services in order to offer prices on a nationally averaged basis, allowing service providers to compete in rural and regional areas; • the power of the Minister to limit the services which NBN Co is permitted to supply, which the Government has said it will use to principally limit NBN Co to layer 2 services, allowing service providers to innovate at layer 3.