



Strategy & Corporate Services

24th August 2011

Michael Cosgrave
Group General Manager,
Communication Group
Australian Competition and
Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne VIC 3000

Executive Director
Regulatory Affairs
Level 11
400 George Street
SYDNEY NSW 2000
Australia

Telephone (02) 8576 2730
Email: jane.vanbeelen@team.telstra.com

By email

cc: Sean Riordan, ACCC

cc: Caroline Lovell, NBN Co Limited

Dear Mr Cosgrave,

Re: Telstra's Structural Separation Undertaking and Migration Plan

I refer to the Structural Separation Undertaking (**SSU**) and draft Migration Plan given by Telstra to the Australian Competition and Consumer Commission (**ACCC**) on 29 July 2011.

Following lodgement of the SSU and draft Migration Plan, the ACCC has drawn Telstra's attention to several issues which it may wish to resolve or clarify prior to the commencement of the ACCC's public consultation process. This letter therefore addresses the following:

- The application of Telstra's non-price interim Equivalence and Transparency commitments to areas which may become the subject of any exemption allowed by the ACCC under a final access determination.
- Several amendments which Telstra proposes to make to the draft Migration Plan to respond to specific concerns raised by the ACCC with Telstra.

Operation of the non price commitments in exempt areas

The ACCC has raised a concern about the extent to which the commitments that have been given in the SSU will apply to regulated services in areas where Telstra is exempt from supply on regulated terms (**exempt areas**). Telstra wishes to clarify that the exclusion for exempt areas is intended to apply to price related commitments only. It is not Telstra's intention to exclude exempt areas from the application of the non-price related commitments.

Accordingly, Telstra proposes to make the following amendments to the SSU before the ACCC makes its decision to accept or reject:

- 1 Amend the definition of Regulated Services as follows:

Regulated Services has the same meaning as in clause 71 of Schedule 1 to the Act ~~but does not include a service to the extent that an access determination in force in respect of that service provides that the standard access obligations do not apply to Telstra in respect that service.~~

- 2 Insert a new clause 17.1 (and make the necessary adjustments to the current paragraph numbering) as follows:

17.1 Price equivalence and transparency measures do not apply in exempt areas

The provisions of this clause 17, Schedule 8, Schedule 9 and Schedule 10 do not apply in respect of a Regulated Service to the extent that an access determination that is in force in respect of that Regulated Service provides that the standard access obligations do not apply to Telstra in respect that Regulated Service.

Interim services

The ACCC has drawn Telstra's attention to clause 6.4 of the Migration Plan, which provides that Telstra will not be required to provide any 'interim carriage service' except Easycall call diversion associated with wholesale line rental (see clause 10.3).

The ACCC has indicated a concern to Telstra that clause 6.4:

- may operate to limit the ACCC's ability to set charges for services that are declared, which is not permitted under the Telecommunications (Migration Plan – Specified Matters) Instrument 2011; and
- the concept of "interim carriage service" is currently not defined and so the scope of the clause therefore remains uncertain.

The reference to interim carriage services is not intended to limit the ACCC's freedom to set charges for declared services, such as wholesale line rental, in the future. Instead, clauses 6.4 (together with clause 10.3) combine to define the precise scope of Telstra's regulatory obligation to provide interim services - providing Telstra with greater regulatory certainty around the scope of its role during the Migration period. In particular, the effect of clause 6.4 would be that the ACCC would not in fact be able to declare an 'interim carriage service'.

However, in an attempt to provide greater clarity around the issue of interim services, Telstra has made the following amendments to the draft Migration Plan:

- Inserted the following new definition of 'Interim Carriage Service' in Schedule 9 – Dictionary.

"Interim Carriage Service" means any carriage service, including any feature or functionality associated with a carriage service, which is supplied or used to manage or mitigate a service disruption associated with Migration. Examples of Interim Carriage Services include an interim wireless service, installation of temporary Copper Paths, call forwarding and call diversion.

- Paragraph 6.4(a)(iii) deleted and replaced with the following:

- (iii) provide any Interim Carriage Service, except Easycall call diversion as specified in clause 10.3.
- A new paragraph 6.4(b) added as follows:
 - (b) For clarity, this clause 6.4 does not limit or restrict the ACCC from setting charges, either in the form of one-off or ongoing charges, with respect to the provision of access to a declared service supplied by Telstra.

Timetable for connection

Section 577BC requires any draft Migration Plan to set out a timetable, or a method for determining a timetable, for Telstra to commence to supply fixed line carriage services using the NBN. Currently this issue is addressed in clause 19(b) of the Migration Plan, which provides:

Telstra will commence to supply carriage services using the NBN Co Fibre Network:

....

- (b) in accordance with a timetable that, to the greatest extent reasonably practicable, is consistent with the requirements of Telstra's Retail Customers within the Fibre Footprint.

The ACCC has queried whether this approach is sufficiently detailed to address the statutory requirement. Telstra has therefore deleted the existing clause 19 and replaced it with the following:

19 Telstra's commencing to provide services using the NBN

Telstra will commence to supply carriage services using the NBN Co Fibre Network:

- (a) by following the connection protocols set out in NBN Co's wholesale broadband agreement or any other connection arrangements agreed from time to time by Telstra and NBN Co; and
- (b) in accordance with a timetable that is determined on the following basis:
 - (i) Telstra will place orders with NBN Co for the NBN Connection of Premises on a region by region basis, commencing in each Rollout Region from the date that NBN Co notifies RSPs that it will commence accepting orders in respect of that Rollout Region;
 - (ii) during the Migration Window in each Rollout Region, Telstra will to the greatest extent reasonably practicable determine the timing of individual orders for NBN Connection of Premises as requested by or otherwise agreed with each Telstra customer and in accordance

with the ordering and provisioning processes established by NBN Co under the connection protocols or other arrangements referred to in clause 19(a).

In addition to these material amendments, Telstra has also taken this opportunity to correct a small number of minor and textual errors which have been identified.

Telstra withdraws its earlier draft Migration Plan and submits the enclosed draft Migration Plan, which incorporates the above amendments, in its place under section 577BDA. Telstra requests that the ACCC therefore prepare its consultation paper on the basis of the enclosed draft Migration Plan.

For information, Telstra also provides a redline version of the draft Migration Plan, showing all changes made from the first draft Migration Plan submitted on 29 July 2011.

Supporting submission

Telstra also wishes to take this opportunity to bring to the attention of the ACCC an error made in its supporting submission to the SSU. The submission at page 7 refers in parenthesis to the price equivalence provisions ending in 2018, irrespective of any extension of the Designated Date in the future. This is incorrect. The SSU at clause 17.5 makes clear that the price equivalence provisions (including the relevant Schedules) continue to apply up to the Designated Day, as varied by the Minister in the future under section 577A of the Telecommunications Act.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jane - 3', with a stylized flourish at the end.

Jane van Beelen
Executive Director – Regulatory Affairs
Strategy & Corporate Services