

**Migration Plan Required Measures**

**Submission by Herbert Geer Lawyers on behalf of:**

**iiNet Limited**

**1 February 2013**

**Public Version**

## 1. INTRODUCTION

This submission is made on behalf of iiNet Limited (**iiNet**) in response to the Australian Competition and Consumer Commission's (**ACCC**) discussion paper of December 2012 entitled: *Migration Plan required measures relating to the pull through connection process* (**the Discussion Paper**).

The confidential version of this submission contains confidential information. All confidential information is marked as '[c-i-c]' and highlighted in yellow. This confidential information has been removed from the public version of this submission.

As part of its structural separation undertaking (**SSU**)<sup>1</sup>, Telstra submitted a draft migration plan (**Migration Plan**)<sup>2</sup> to the ACCC for approval. The SSU and Migration Plan were approved by the ACCC on 27 February 2012.

At the time Telstra submitted the Migration Plan to the ACCC, Telstra was not in a position to establish or specify the detailed content of the following:

1. the processes for Telstra to obtain relevant consents and releases from wholesale customers and provide relevant notice to wholesale customers associated with pull through activities<sup>3</sup> by NBN Co;
2. the process for managed disconnection of copper services (which are not special services) on the disconnection date (i.e. services for which no order for disconnection has been received);
3. the process for managed disconnection of HFC services;
4. the process for Telstra to build copper paths at premises which had previously been permanently disconnected, in order to supply special services and special service inputs to that premises;
5. the processes which will be used to manage and implement disconnection of copper services of each special service class; and
6. the NBN Information Security Plan,

**(the Required Measures).**

The Migration Plan contains a commitment for Telstra to submit the Required Measures to the ACCC for approval within a specified timeframe<sup>4</sup>.

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<sup>1</sup> Structural Separation Undertaking given by Telstra Corporation Limited to the Australian Competition and Consumer Commission on 29 July 2011 under section 577A of the Telecommunications Act 1997 dated 9 December 2011.

<sup>2</sup> The draft migration plan is a separate document entitled: 'Migration Plan given by Telstra Corporation Limited to the Australian Competition and Consumer Commission 24 August 2011 under section 577BDA of the Telecommunications Act 1997'.

<sup>3</sup> Note that a reference in this submission to 'pull through activities' or 'pull through' is a reference to pull through activities as defined in the Migration Plan.

<sup>4</sup> Migration Plan clause 5.1(c).

Telstra has submitted a draft Required Measure 1 to the ACCC. Telstra has addressed Required Measure 1 in two parts as follows:

- Required Measure 1(a) - Pull Through Consents; and
- Required Measure 1(b) - Pull Through Exception Event and Installation of Temporary Cable Notifications.

The Discussion Paper seeks feedback from interested parties on the draft Required Measure 1.

## 2. OVERVIEW OF SUBMISSION

iiNet submits that the ACCC should conclude that it cannot be satisfied that Required Measure 1(a) and Required Measure 1(b) comply with the requirements of the *Telecommunications (Migration Plan Principles) Determination 2011 (the Migration Plan Principles Determination)*. Accordingly, in accordance with clause 5.4(d) of the Migration Plan, the ACCC should refuse to accept Required Measure 1(a) and Required Measure 1(b).

iiNet submits that:

- Required Measure 1(a) does not comply with the Migration Plan Principles Determination because contrary to section 8 of the Migration Plan Principles Determination:
  - the requirement for unqualified global consents in respect of pull through activities has the potential to remove autonomy from wholesale customers and lead to unnecessary service disruption; and
  - the scope of the release from liability that is given to NBN Co and Telstra has the potential to unnecessarily increase service disruption.
- The ACCC should conclude that it cannot be satisfied that that Required Measure 1(a) satisfies the requirements of the Migration Plan Principles Determination because the manner in which it has been drafted leads to uncertainty in respect of:
  - the scope of Required Measure 1(a);
  - the scope of the consent provided by wholesale customers in relation to the use and disclosure of confidential information; and
  - the scope of the undertaking provided by wholesale customers.
- The ACCC should conclude that it is unable to be satisfied that Required Measure 1(b) complies with the Migration Plan Principles Determination because there is doubt as to whether Required Measure 1(b) provides for the equivalent treatment of wholesale customers and Telstra's retail business units, and, therefore, the ACCC cannot be satisfied that Required Measure 1(b) complies with section 21 of the Migration Plan Principles Determination.

The remainder of this submission:

- provides the detailed reasoning in respect of:
  - why Required Measure 1(a) does not comply with section 8 of the Migration Plan Principles Determination;
  - the drafting issues relating to Required Measure 1(a); and
  - why the ACCC cannot be satisfied that Required Measure 1(b) complies with section 21 of the Migration Plan Principles; and
- provides iiNet's response to the specific questions in the Discussion Paper.

### 3. **WHY REQUIRED MEASURE 1(a) DOES NOT COMPLY WITH SECTION 8 OF THE MIGRATION PLAN PRINCIPLES DETERMINATION**

Section 8 of the Migration Plan Principles Determination provides as follows:

*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*
- (b) *to the extent it is in Telstra's control, minimises disruption to the supply of fixed-line carriage services; and*
- (c) *to the greatest extent practicable, gives wholesale customers autonomy over decisions about the timing of 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*
- (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 that network in that rollout region.*

iiNet submits that Required Measure 1(a) does not comply with the Migration Plan Principles Determination because contrary to section 8 of the Migration Plan Principles:

- the requirement for unqualified global consents in respect of pull through activities has the potential to remove autonomy from wholesale customers and lead to unnecessary service disruption; and
- the scope of the release from liability that is given to NBN Co and Telstra has the potential to unnecessarily increase service disruption.

Each of these issues will be considered in turn.

### 3.1 The requirement for global consents

iiNet submits that Required Measure 1(a) cannot properly be considered in isolation from NBN Co's connection process and the role that pull through activities will play in that process. In providing its submission on Required Measure 1(a), iiNet is proceeding on the basis that the process set out in Attachment A of the Discussion Paper, and the description of how features of this process will work set out in the Discussion Paper, will be applicable. The salient features of this process are as follows:

1. Where it is able to do so, NBN Co will connect premises during the 'build drop' stage of the deployment of the NBN. Pull through activities will not be used during the 'build drop' phase<sup>5</sup>.
2. When a retail customer wishes to have an NBN service activated, they must contact their retail service provider (**RSP**) to request an NBN service<sup>6</sup>.
3. After receiving an order from the retail customer, the RSP:
  - (a) conducts service qualification tests; and
  - (b) uses reasonable endeavours to ask the retail customer to indicate whether they provide consent for NBN Co to perform pull through and so consent to having a temporary outage of their current copper or HFC services<sup>7</sup> (iiNet assumes that obtaining this consent will not be required if the premises has already been connected during the 'build drop' phase - iiNet also assumes that NBN Co will provide sufficiently precise information - e.g. duration of outage etc - to allow the RSP to obtain an informed consent from the end user).
4. The RSP then:
  - (a) places the order with NBN Co; and
  - (b) if relevant (i.e. if the premises was not connected during the 'build drop' phase), indicates whether the end user has consented to the performance of pull through/temporary outages on their existing copper and/or HFC services for the installation of the NBN service (iiNet assumes that if the RSP indicates that the end user has not consented to pull through activities, this will be noted by NBN Co and step 6 below will not apply); and
  - (c) selects an available date for the installation from the NBN Co booking system<sup>8</sup>.
5. NBN Co will not use pull through activities unless a lead in cable cannot otherwise be installed in the existing conduit from the curb to a premise<sup>9</sup>.

<sup>5</sup> Discussion Paper at p.7.

<sup>6</sup> Discussion Paper Attachment A, second box.

<sup>7</sup> *ibid.*

<sup>8</sup> Discussion Paper Attachment A, third box.

6. If the NBN installer decides to use pull through they will check with Telstra whether there are any cables that cannot be used for pull through<sup>10</sup>.
7. NBN Co will not use pull through if Telstra advises NBN Co that:
  - (a) the wholesale customer has not provided consent<sup>11</sup>; and/or
  - (b) the relevant Copper Line is used to supply any of the following services (or services with substantially similar service levels)<sup>12</sup>:
    - (i) priority assistance services;
    - (ii) medical alert services;
    - (iii) alarm services;

(for ease of expression referred to as **Excluded Services**).

Required Measure 1(a) relates to two distinct consents as well as a release and undertaking. These are:

- consent from the wholesale customer for NBN Co to use pull through (**the Pull Through Consent**)<sup>13</sup>;
- consent from the wholesale customer for NBN Co to use or disclose confidential information provided to NBN Co for the purposes of pull through activities<sup>14</sup> (**the Confidential Information Consent**);
- a release from the wholesale customer in favour of NBN Co for certain losses or claims arising in relation to the pull through activities (**the Release**)<sup>15</sup>; and
- an undertaking by the wholesale customer, for the purposes of providing information directly to NBN Co (if so requested) as to whether there is a priority assistance service, medical alert service, alarm service, or service with substantially similar service levels being supplied over a copper line (**the Undertaking**),

(referred to collectively as **the Consents, Release and Undertaking**).

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<sup>9</sup> Discussion Paper, p.6.

<sup>10</sup> Discussion Paper Attachment A, fourth box.

<sup>11</sup> By virtue of clause 10.1(c) of the Migration Plan.

<sup>12</sup> This is assumed from clause 10.1(d)(iv) of the Migration Plan and the discussion in section 4.1 of the Discussion Paper. However, this requires confirmation from NBN Co. iiNet also notes that the Discussion Paper states that if 'special services' are provided over a particular line, that line will be considered as non-removable and pull through will not proceed - Discussion Paper at p.9.

<sup>13</sup> As contemplated by clause 10.1(d)(i) of the Migration Plan - and effected by clause 1.2 of the Draft Deed Poll.

<sup>14</sup> As contemplated by clause 10.1(d)(iii) of the Migration Plan - and effected by clause 1.3 of the Draft Deed Poll.

<sup>15</sup> As contemplated by clause 10.1(d)(ii) of the Migration Plan - and effected by clause 1.6 of the Draft Deed Poll.

iiNet notes that Required Measure 1(a) deals with the Consents, Release and Undertaking on an all or nothing basis - i.e. either the wholesale customer provides the Consents, Release and Undertaking in all instances or the wholesale customer does not provide them at all. iiNet believes that this approach is problematic. The reasons for this are best demonstrated by means of some practical scenarios as follows.

Scenario 1

*There are two separate retail customers at a premises, Retail Customer 1 and Retail Customer 2. Retail Customer 1 is supplied by RSP 1. Retail Customer 2 is supplied by RSP 2. The services supplied to Retail Customer 1 and Retail Customer 2 use the same lead in conduit. The services supplied to Retail Customer 1 and Retail Customer 2 are not Excluded Services. It was not possible to connect the premises to the NBN during the 'build drop' phase. Both RSP 1 and RSP 2 provide the Consents, Release and Undertaking to Telstra. Retail Customer 1 requests RSP 1 to provide Retail Customer 1 with an NBN service and to simultaneously disconnect Retail Customer 1's copper service. RSP 1 obtains consent from Retail Customer 1 for NBN Co to undertake pull through activities. The NBN installer decides it is appropriate to use pull through. Telstra advises that the required consents have been given. NBN Co proceeds with the pull through which causes an outage to Retail Customer 1's service and Retail Customer 2's service in circumstances where Retail Customer 2 has not consented to it and neither Retail Customer 2 nor RSP 2 had any prior notice of the outage.*

Scenario 2

*The retail customer receives a voice telephone service from RSP 1, and a broadband service (provided by means of the LSS) from RSP 2. The retail customer requests RSP 2 to provide the retail customer with an NBN broadband service. RSP 2 obtains consent from retail customer for pull through. However, the retail customer proceeds on the assumption that the outage will only affect the broadband service and not the voice telephone service.*

iiNet believes that an outcome where a retail customer experiences an outage to their service without prior knowledge or consent, in circumstances where their RSP had no prior knowledge of the outage, removes the level of autonomy required by section 8 of the Migration Plan Principles Determination and gives rise to the potential for unnecessary service disruption. iiNet submits that such an outcome is contrary to section 8 of the Migration Plan Principles Determination.

iiNet acknowledges that requiring wholesale customers to give individual consents in all instances will create an unnecessary administrative burden. However, as demonstrated above, a situation where the Consents, Release and Undertaking are given in an unqualified global way is problematic. iiNet submits that an appropriate balance can be achieved by dealing with the Consents, Release and Undertaking in the following way:

- Subject to the issues relating to the scope of the Confidential Information Consent discussed in section 4.2 below, wholesale customers provide the Confidential Information Consent on a global basis.
- Wholesale customers provide the Pull Through Consent on a *qualified* global basis - i.e. the wholesale customer provides consent in all instances where it has submitted an order with NBN Co and indicated that its retail customer has consented to the use of pull through activities (as per step 4(b) above). In all other cases, the wholesale customer does not provide consent. When NBN Co checks with Telstra at step 6 above, Telstra

should notify NBN Co if there is more than one wholesale customer using the lead in conduit. This will alert NBN Co to the need to obtain consent from the other wholesale customers before undertaking the pull through activities, thereby avoiding the outcome in the scenarios above where a retail customer experiences a service outage caused by pull through activities without the retail customer consenting to it.

- Subject to the drafting issues discussed section 4.3 below, wholesale customers provide the Undertaking to be applicable in all cases where the qualified global consent applies.
- Subject to the issues discussed in section 3.2 below regarding the scope of the Release, wholesale customers provide the release in all cases where the qualified global consent applies.

### 3.2 The scope of the release

iiNet notes the following comments in the Discussion Paper<sup>16</sup>:

*The ACCC understands that NBN Co intends to install temporary cables at premises where the copper line or HFC cable cannot be rectified. The effect of draft clause 1.6(c) would appear to be that neither NBN Co or Telstra is liable for the failure of the temporary cable to facilitate the supply of the existing services to the premises.*

*Consequently, in the event of an extended period of service outage, in circumstances where there is delayed commencement of the NBN fibre service, the wholesale customer would appear to have little capacity to ensure continuity of service for their end users.*

iiNet believes that unless there is a clear incentive for NBN Co to deal with any problems in reconnecting the copper service (where required), end user services could be disrupted for a longer period than necessary. Such an outcome is contrary to section 8(b) of the Migration Principles Determination. iiNet submits that at the very least, NBN Co and Telstra should not be excused from any liability under the section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*<sup>17</sup>.

## 4. DRAFTING ISSUES RELATING TO REQUIRED MEASURE 1(a)

iiNet submits that the ACCC should conclude that it cannot be satisfied that Required Measure 1(a) complies with the requirements of the Migration Plan Principles Determination because the manner in which it has been drafted leads to uncertainty in respect of:

- the scope of Required Measure 1(a);

<sup>16</sup> Discussion Paper at p.12.

<sup>17</sup> Section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* allows a carriage service provider (the first carriage service provider) to seek contribution from another carriage service provider (the second carriage service provider) in circumstances where the first carriage service provider is liable to pay compensation to an end user under the *Telecommunications (Customer Service Guarantee Standard) 2011 (CSG)*, and the circumstances giving rise to the first carriage service provider's liability under the CSG were wholly or partly attributable to the second carriage service provider.



- the scope of the Confidential Information Consent; and
- the scope of the Undertaking.

Each of these issues will be considered in turn.

#### 4.1 The scope of Required Measure 1(a)

Required Measure 1(a) specifies a process that requires Telstra's wholesale customers to execute a 'Deed Poll' and 'Disclosure Consent'. Rather than including the Deed Poll and Disclosure Consent as part of Required Measure 1(a), Required Measure 1(a) states that Telstra will provide a copy to the ACCC on request<sup>18</sup>. This implies that the content of the Deed Poll and Disclosure Consent that is not expressed in Required Measure 1(a) does not form part of Required Measure 1(a). This is an important point because the ACCC only has power to assess the Required Measures.

In its supporting submission, Telstra states that given the nature of the Deed Poll and Disclosure Consent, it is not appropriate for it to be publicly available<sup>19</sup>. iiNet notes that notwithstanding this, a document entitled 'Consents, releases and undertakings' (**the Draft Deed Poll**) has been included as Attachment B to the Discussion Paper. However, inclusion of the Draft Deed Poll in the Discussion Paper does not have the effect of making its contents part of Required Measure 1(a).

iiNet submits that the Draft Deed Poll is an integral part of the process for Telstra to obtain consents, releases and undertakings for NBN Co to undertake pull through activities, and, as such, its full content should come within the scope of Required Measure 1(a). iiNet submits that if Required Measure 1(a) does not include the content of the Draft Deed Poll, it will not be possible for the ACCC to conclude that Required Measure 1(a) complies with the Migration Plan Principles Determination because the exact terms on which Telstra obtains the relevant consents, releases and undertakings will be outside the scope of Required Measure 1(a). Therefore, iiNet submits that the ACCC should refuse to approve Required Measure 1(a) and direct Telstra to re-submit it in a form that includes the Draft Deed Poll as an annexure as well as including in Required Measure 1(a) an express statement to the effect that the Draft Deed Poll forms part of Required Measure 1(a). Note that in the remainder of this submission iiNet proceeds on the basis that the Draft Deed Poll is included as part of Required Measure 1(a).

#### 4.2 The scope of the Confidential Information Consent

Clause 1.3 of the Draft Deed Poll provides as follows (emphasis added) (emphasis added):

***1.3 Consent for disclosure and use of confidential information***

*[Customer] consents to:*

<sup>18</sup> Required Measure 1(a), at p.4.

<sup>19</sup> Required Measure 1(a) - Obtaining Consents and Releases from Wholesale Customers for Pull Through Activity by NBN Co - Overview and Supporting Submission - Telstra Corporation Limited, at footnote 1.

*(a) a Telstra Person disclosing [Customer]'s name to NBN Co Entity or its Personnel for the purposes of Pull Through Activities, installing any Temporary Cable and Cable Rectification;*

***(b) NBN Co Person, using and disclosing confidential information of [Customer] which is provided to any of them by a Telstra Person or [Customer] for the purposes of Pull Through Activities, installing any Temporary Cable and Cable Rectification and related purposes;***

*(c) Telstra disclosing to the ACCC in its quarterly reporting under the Migration Plan that [Customer] has signed this deed poll; and*

*(d) in response to a request from the ACCC, a Telstra Person or a NBN Co Person disclosing to the ACCC confidential information of [Customer] in connection with Pull Through Activities, installing any Temporary Cable or Cable Rectification.*

iiNet notes that 'confidential information' is not defined. iiNet submits that the type of confidential information (e.g. number of services and/or service types provided to the particular premises) that Telstra is intending to disclose to NBN Co should be specified.

### 4.3 The scope of the Undertaking

The Undertaking is currently drafted as follows<sup>20</sup>:

#### **1.5 [Customer] to provide information to NBN Co Entity on request**

*If:*

*(a) there is one of the following types of services being supplied over the Copper Line (other than by Telstra):*

- (i) a priority assistance service;*
- (ii) a medical alert service;*
- (iii) an alarm service; or*
- (iv) a service with substantially similar service levels to the services listed in clauses 1.5(a)(i) to 1.5(a)(iii); and*

*(b) NBN Co Entity requests information as to whether any of those services is being supplied over the Copper Line for the purposes of Pull Through Activities, then:*

*(c) [Customer] undertakes to provide that information under this clause 1.5 completely and accurately to NBN Co Entity directly and immediately on request; and*

*(d) [Customer] indemnifies each Telstra Person and each NBN Co Entity for any Loss or Claim arising out of or in relation to a failure by [Customer] to provide that information under this clause 1.5 completely and accurately to NBN Co Entity immediately on request.*

iiNet submits that this is too broad because if it is taken literally it could put an obligation on a wholesale customer to provide information to NBN Co (and indemnify Telstra and NBN Co in respect of the accuracy of that information):

<sup>20</sup> Clause 1.5 of the Draft Deed Poll.

- in circumstances where the wholesale customer has not submitted an order to NBN Co in respect of the relevant premises; and/or
- about services that are provided by another wholesale customer.

iiNet submits that the undertaking should only apply in respect of:

- premises where the wholesale customer has submitted an order for the connection of an NBN service; and
- services that are being supplied by that wholesale customer.

## 5. WHY THE ACCC CANNOT BE SATISFIED THAT REQUIRED MEASURE 1(b) COMPLIES WITH SECTION 21 OF THE MIGRATION PLAN PRINCIPLES

Section 21 of the Migration Plan Principles Determination provides as follows:

*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.*

Required Measure 1(b) relates to the process for Telstra to notify wholesale customers of:

- 'pull through exception events'<sup>21</sup>; and
- the copper service being reinstated by means of a temporary cable, (collectively referred to as 'notification events').

iiNet notes the following comments in the Discussion Paper<sup>22</sup> (emphasis added):

*The use of pull through will often be a step in a process that culminates in the disconnection of the existing service or services being supplied over the copper line. For instance, if the end user has agreed to switchover all of their existing services, the lead in cable used for pull through will not be reinstated and the existing services will be disconnected within Telstra's systems at the conclusion of the NBN provisioning process without further action being required of the end user.*

*As discussed below, NBN Co has advised that it does not intend to use pull through activities unless a lead in cable cannot otherwise be installed in the existing conduit from the curb to a premise. **Pull through activities will only be undertaken following an end user submitting an order to switchover existing services onto the NBN.***

Given that it appears that pull through will not be used:

- where the copper line is used to provide Excluded Services; and

<sup>21</sup> A pull through exception event is defined in the Migration Plan as: *a circumstance that prevents Personnel from being able to complete Pull Through Activities or Cable Rectification*

<sup>22</sup> At p.6.

- unless the end user intends to switchover their existing services to the NBN,

it is unclear to iiNet the circumstances in which it will be necessary to reconnect the copper service after the NBN service has been connected, and it appears that, in practice, the reconnection of the copper service may only be required as a temporary measure in circumstances where there has been a problem connecting the NBN service and reinstating the copper service is deemed to be the best way to maximise continuity of service. iiNet believes that it is important that as part of its assessment of Required Measure 1(b), the ACCC clarify whether iiNet's analysis in this regard is correct.

iiNet's concern with Required Measure 1(b) is that it does not oblige Telstra to deliver equivalence as between Telstra Retail and wholesale customers in respect of notification events. Telstra's submission in support of Required Measure 1(b) has this to say about achieving equivalence<sup>23</sup>:

*In accordance with Migration Plan Principle 21, which provides for equivalent treatment of Wholesale Customers and Telstra's Retail Business Units in the implementation of disconnection processes, the communication process in Required Measure 1 (b) ensures that Wholesale Customers are informed promptly after Telstra is told by NBN Co. of Exception Events or Temporary Cable installations that impact them. This is consistent with the requirements for the development of the Required Measure under clause 10.2 of the Migration Plan.*

It is clear from this statement that Required Measure 1(b) does not even purport to deliver equivalence - i.e. although wholesale customers may be notified 'promptly' there is nothing to stop Telstra Retail being notified more promptly. In light of this, iiNet submits that the ACCC cannot be satisfied that Required Measure 1(b) satisfies the requirements of section 21 of the Migration Plan Principles Determination.

## 6. ANSWERS TO SPECIFIC ACCC QUESTIONS

### **1. Does the process for obtaining wholesale customer consents for pull through comply with the requirements of the migration plan and the migration plan principles?**

iiNet submits that for the reasons set out at section 3 above, the process for obtaining customer consents for pull through does not comply with the migration plan principles.

### **2. Does the global nature of the consents sought under the Deed Poll undermine wholesale customer capacity to minimise the period of any service outage and disruption to the supply of communication services to their end users?**

Yes. Please refer to section 3.1 above.

<sup>23</sup> Required Measure 1(B) – Process For Telstra To Provide Relevant Notices To Wholesale Customers Associated With Pull Through Activities By Nbn Co Overview And Supporting Submission, at p.5.

**3. What arrangements for providing consent to pull through would be most likely to benefit wholesale customer autonomy while also not unduly limiting the timeliness and efficiency of the pull through process?**

iiNet submits that a wholesale customer providing a *qualified* global consent as described in section 3.1 above, would be most likely to benefit wholesale customer autonomy while also not unduly limiting the timeliness and efficiency of the pull through process.

**4. Would the inclusion in the required measures of a notification process to wholesale customers ahead of the use of pull through assist wholesale customers manage service continuity for their end users?**

Yes, but this does not alleviate the need to have qualified global consents as described in section 3.1 above.

**5. Does the release under draft clause 1.6(c) of the Deed Poll undermine the capacity of wholesale customers to minimise the period of any service outage for their end users?**

Yes. Please see section 3.2 above.

**6. Do the required measures provide assurance that wholesale customers of Telstra obtain and supply information to NBN Co regarding the existence of priority assistance and medical alert services?**

Yes, subject to the comments in section 4.3 above regarding the scope of the Undertaking.

**7. What information do wholesale customers currently provide to Telstra about priority assistance and medical alert services?**

iiNet does not currently provide priority assistance and medical alert services so is not in a position to answer this question.

**8. Could the required measures be amended in any way to provide additional assurance that priority assistance and medical alert customers will be identified to NBN Co?**

Please see response to question 7.

**9. What other measures could be established to provide such additional assurance?**

Please see response to question 7.

**10. In the absence of wholesale customer agreement to undertake Reinstatement or Remote Tests, is there sufficient assurance that existing communications services will be able to recommence for end-users who do not migrate all their services over to the NBN on the connection date?**

iiNet believes that the principal responsibility to reinstate copper services (where required) and establish that they are working should rest with NBN Co. It is unclear to iiNet what precise tests would be required. iiNet submits that it may be necessary

to distinguish between 'on net' services<sup>24</sup> and 'off net' services<sup>25</sup> as regards the particular testing that a wholesale customer may be able to undertake. iiNet believes that any obligation on wholesale customers to carry out testing should be subject to there being a clear procedure and agreement in place with NBN Co that governs what tests are to be undertaken and in what circumstances. This should also, where appropriate, include an obligation on Telstra to conduct the relevant tests (e.g. where Telstra is better able to do so, for example in the case of 'off net' services). In this regard, it should be noted that although the Migration Plan states that Telstra is not required to undertake any pull through activities, cable rectification or installation of any temporary cable at a premises<sup>26</sup>, the scope of this carve out does not extend to off premises tests to establish if the wholesale service that Telstra is providing is working.

**11. Does the process for notifying wholesale customers that a notification event has occurred comply with the requirements of the migration plan and the migration plan principles?**

No because it has not been established that this process delivers equivalent outcomes as between Telstra Retail and wholesale customers.

**12. Within what time period would wholesale customers need to be provided with notification of a pull through exception event in order to take steps to minimise disruption of their end users' services?**

As soon as possible but the issue is not really about the time period, it is about ensuring that it is the same time period as Telstra Retail.

**13. What information do wholesale customers need to know regarding a 'notification event' in order to effectively manage the supply of services to their end users? In particular, in what ways would additional information benefit wholesale customers to do this? In responding to this question please consider information relating to:**

**--the type of exception event**

**--the particulars of the exception event, including an anticipated timeframe for rectification.**

As the definition of 'exception event' is extremely broad, NBN Co and Telstra should be required to provide as much detail as is reasonably practicable. iiNet believes that information as to the type of exception event, the particulars and anticipated timeframe is the minimum amount of information that would be required.

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<sup>24</sup> These are services that are provided using the wholesale customer's infrastructure with ULLS or LSS as the wholesale input.

<sup>25</sup> These are services provided by means of reselling wholesale services, such as Wholesale ADSL.

<sup>26</sup> Migration Plan clause 10.1(b).

**14. Can wholesale customers access SIIAM records to check the fault status of a line without contacting Telstra Wholesale?**

**[c-i-c]**

**Herbert Geer Lawyers on behalf of iiNet Limited,**

**1 February 2013**