



Submission by AAPT Limited (February 2013)

to

Australian Competition and Consumer Commission

on

**Migration plan required measures relating to the pull
through connection process - Discussion Paper, dated
December 2012**



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) *Migration plan required measures relating to the pull through connection process - Discussion Paper*, dated December 2012 (**Discussion Paper**).
2. For the reasons set out in this submission, AAPT considers that neither the draft Required Measure 1(a) nor Required Measure 1(b) comply with the requirements of the migration plan and the migration plan principle.

1 Executive summary

1(a) Required Measure 1(a) – *Obtaining pull through consents and releases from wholesale customers*

3. AAPT acknowledges that allowing Telstra to seek consent from its wholesale customers for NBN Co's Pull Through Activities on a global basis may be efficient and could promote timely pull through. Nevertheless, as the ACCC notes in the discussion paper, these perceived benefits must be balanced with wholesale customers' need to manage their own end users. This flexibility is particularly crucial to AAPT where its customer is also a wholesale service provider with end users of its own.
4. In this context, AAPT has a number of issues regarding Telstra's draft Required Measure 1(a), which among other things, involves Telstra seeking a global consent from wholesale customers in the form of the draft 'consents, releases and undertakings' deed poll (**Deed Poll**). AAPT's concerns include the following matters:
 - (a) the omission of detail about NBN Co's Pull Through Activities;



- (b) the need to narrow the application of the Deed Poll with known existing specific carve outs;
 - (c) Wholesale customer should only be required to procure consent from their own wholesale customers (not consent on their behalf); and
 - (d) consent should not preclude wholesale customers from being able to manage any outages with their end-users.
5. In AAPT's view, draft Required Measure 1(a) does not comply with the requirements of the migration plan and the migration plan principle because it does not give autonomy to Telstra wholesale customers (to the greatest extent possible) to minimise service outages or service disruptions.

1(b) Required Measure 1(b) – *Notification of pull through exception events*

6. AAPT consider that Telstra's proposed Required Measure 1(b) does not comply with the requirements of the migration plan and the migration plan principle because it does not provide equivalent treatment of wholesale customers and Telstra's retail business units in providing notification of pull through exception events. Refer to the response to the ACCC questions regarding Required Measure 1(b) set out further below.

2 Concerns regarding Required Measure 1(a)

2(a) Omission of detail about NBN Co's Pull Through Activities

7. In principle, AAPT does not have an issue with providing consent for NBN Co to undertake pull through. However, neither the draft Required Measure 1(a) nor the Deed Poll contain any detail about the Pull Through Activities for which consent is being sought. In AAPT's view, Telstra's wholesale customers are effectively being requested to consent to NBN Co carrying out pull through by any process it determines. This would not be so unreasonable but for the Deed



Poll *also* requiring wholesale customers to indemnify both NBN Co and Telstra against any claims should the pull through process determined by NBN Co adversely affect AAPT's interest.

8. While the ACCC has provided a high level overview of its understanding of how NBN Co intends to carry out the Pull Through Activities, and Telstra commits in Required Measure 1(a) to providing further information about pull through on the Telstra Wholesale Customer Portal (among other things), this does not change the nature, or breadth, of the consent required under the Deed Poll.
9. AAPT considers that some detail about the Pull Through Activities (for example at a similar high level detail as provided by the ACCC in the Discussion Paper) needs to be incorporated into Required Measure 1(a), and into the Deed Poll by way of reference to the final Required Measure 1(a) approved by the ACCC. The result of this would in effect limit the definition of "Pull Through Activities", and consequently the scope of the consent and indemnification provided under the Deed Poll, to pull through activities reviewed and approved by the ACCC.

2(b) Specific carve outs from consent required

10. AAPT notes that there are a number of circumstances set out in the ACCC's discussion paper in which NBN Co does not intend to conduct pull through and these should be reflected in Required Measure 1(a) and the Deed Poll so that these specific exceptions or carve outs are expressly excluded from the scope of the consent and indemnification provided under the Deed Poll. The specific carve outs of which AAPT is aware include the following, which should all be expressly set out in Required Measure 1(a) and/or the Deed Poll:
 - (a) consent for pull through is only given in the circumstances a retail service provider (RSP) has submitted a connection order for an NBN service on behalf of the end user;



- (b) consent is not provided with respect to pull through of lines carrying special services;
 - (c) consent is not provided as to the actual timing of an outage as AAPT believes this will be a matter ultimately arranged between NBN Co and the end-user;
 - (d) any consent provided does not extend to lines where priority assistance services, medical alert services or other alarms services are being acquired at the premises; and
 - (e) consent is not provided when a third party provider places an order with NBN Co replace to a copper based service, as AAPT cannot consent until the customer places an order to get consent.
11. In addition to the above carve outs, AAPT considers that consent should also not apply to those lines which AAPT is unable to procure consent for pull through from its wholesale customers. This is discussed further at paragraphs 13 to 15.
12. Without these specific carve outs being expressly set out, AAPT would effectively be consenting to, and indemnifying NBN Co and Telstra for, pull through to occur in any of the above circumstances even though pull through should never be undertaken with respect to these lines. For example, AAPT should not have to indemnify either NBN Co or Telstra for causing an outage of a line carrying a special service because that line was used by NBN Co for Pull Through Activities when it should never have been.
- 2(c) Wholesale customer should only be required to procure consent from their own wholesale customers**
13. AAPT is willing, subject to the issues in this submission being addressed, to provide consent on behalf its direct end-users (namely, retail customers).



However, AAPT does not consider it is practical or appropriate for AAPT to be required to provide consent on behalf of its wholesale customers. Telstra itself has not been willing to do that. Rather, Telstra has only committed to seeking the consent from each Telstra Wholesale Customer, not providing consent on their behalf.

14. AAPT notes that in the draft Required Measure 1(a), Telstra states that the upfront, global consent it is seeking from each Telstra Wholesale Customer “mirror[s] the consent that Telstra has already given to NBN Co in its capacity as a service provider.”¹ This is not entirely accurate. In its supporting submission, Telstra states that it has provided NBN Co with relevant consents to conduct pull through activities for its retail customers. It has not provided consent for Telstra Wholesale Customers, acknowledging that RSPs will be responsible for the management of their own end users.
15. In the same vein, AAPT cannot provide consent for AAPT Wholesale Customers because they must be afforded the ability to manage their own end users. As with Telstra, all AAPT can do with respect to AAPT Wholesale Customers, is to commit to using reasonable endeavours to procure consent from AAPT Wholesale Customers. Where such consent is not given, AAPT cannot provide consent on that AAPT Wholesale Customer’s behalf.

2(d) Consent should not preclude wholesale customers from managing any outages with their end-users

16. Given that Pull Through Activities will be undertaken by NBN Co, RSPs will inherently lack visibility at crucial stages of the process which could potentially have an adverse impact on RSPs’ ability to effectively manage outages with their end-users. As noted by the ACCC (with which AAPT agrees), the following processes would greatly assist a RSP to manage outages with their end-user:

¹ Draft Required Measure 1(a), p. 2.



- (a) For preparation purposes, Telstra's wholesale customers should be informed of NBN Co's belief that pull through can be used at a premises at the same time as NBN Co advises an end user that connection was not possible, and that the premises will instead be connected after the end user places an order with its RSP. This will allow the RSP to know whether pull through will likely be required and to minimise disruption to its end users by for example, arranging call diversion services. Such notices should also be sufficiently timely to allow AAPT time to inform its own wholesale customers down the chain.
 - (b) Where appropriate, wholesale customers should have the flexibility to *partly* withdraw its global consent either on a per end user basis or service type basis, subject to there being a legitimate need being established.
 - (c) Where necessary and appropriate, wholesale customer should be given the ability to manage and change appointment times with their end users and NBN Co.
- 17. For the reasons set out above, AAPT considers that draft Required Measure 1(a) does not comply with the requirements of the migration plan and the migration plan principle. Among other thing, it does not give autonomy (to the greatest extent possible) to wholesale customers to minimise service outages or service disruptions.
- 18. On separate but related matters AAPT notes that:
 - (a) Under clause 2.2 of the Deed Poll, Telstra has discretion to terminate the Deed Poll (in whole or in part) if the approved Required Measure 1(a) conflicts with the terms of the Deed Poll. While AAPT understands the purpose behind the clause, it is not appropriate for Telstra to have discretion to decide whether an executed Deed Poll should be terminated based on what it interprets to be inconsistent with the approved Required



Measure 1(a). The Deed Poll contains undertakings given by the named, signing party. While Telstra obtains the benefit of the Deed Poll and can seek its enforcement, it is not a party to the Deed Poll. It would be more appropriate in this context to have a clause which states that the Deed Poll ceases to apply to the extent of any inconsistency with the approved Required Measure 1(a).

- (b) Clause 3.1(c) should be deleted. Wholesale customers should not be required to agree to comply with processes that will be set out on the Telstra Wholesale Customer Portal at a later date without knowing what those processes might be.

Response to ACCC questions regarding Required Measure 1(a)

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*

[Refer to paragraphs 7 to 17.](#)

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. Refer to paragraphs 7 to 17.](#)

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?*

[Yes. Refer to paragraphs 7 to 17.](#)



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. Refer to paragraph 16.

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, refer to paragraphs 7 to 17. The release is overly broad and makes AAPT reluctant to provide consent on a global basis.

AAPT notes that the release applies to both NBN Co and Telstra even though a failure may only be relevant to one of these parties. For example in clause 1.6(g) of the Deed Poll, the customer is required to release both NBN Co and Telstra for a failure by Telstra to provide the customer with complete and accurate notice where the mistake was the fault of NBN Co. In this circumstance, AAPT would be willing to release Telstra, but not NBN Co.

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?*

AAPT notes that wholesale customers already supply information about priority assistance and medical alert services to Telstra, who then tags the relevant line as a priority assistance line. It seems inefficient to have to provide this information twice, unless it is intended to be used as part of a cross-checking exercise.



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

Refer to response to question 6 above.

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?*

Should it be accepted that any consent provided is limited to circumstances when an order is placed, it is feasible for AAPT to request from its customers at that time, information about whether they have priority assistance and medical alert and provide that information to Telstra. However, AAPT should not have to prove, indemnify nor guarantee that that information is correct or accurate.

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

AAPT considers it would be good practice that, when NBN Co goes to site, it should check with the customer (i.e. end user) whether they are still OK if there is a potential extended outage.

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 after pull through?*

AAPT considers that it is more efficient, timely and convenient for the customer and NBN Co to conduct Reinstatement or Remote Tests. AAPT presumes the test involves the end user checking that they can make a phone call on the copper service after pull through. Therefore, there is no need to complicate the process by getting a wholesale customer (e.g. AAPT) to contact its customer to get that customer to check they can make calls.



Response to ACCC questions regarding Required Measure 1(b)

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. It does not provide equivalent treatment of wholesale customers and Telstra's retail business units in providing notification of pull through exception events. Refer to the response to the ACCC in response to question 14 below.

In addition, some parts of the Required Measure 1(b) documentation are not sufficiently detailed. For example, AAPT notes that item 4 of the table on page 4 of Required Measure 1(b) provides that Telstra will automatically log a fault on the service exemption and then notify the Service Provider that the fault has been logged.

AAPT seeks further information/clarification from Telstra on their fault management for pull through exception events, including:

- Do these faults fall under the standard assurance SLA for repair?
- Is there an escalation process (outside the standard BAU escalation process) that a Service Provider can follow to get the service restored quickly?

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?*

The maximum of 2 business days after receiving notice is too long. AAPT needs to be advised as soon as Telstra becomes aware of it, or not long after. This should occur in a matter of minutes, not hours. Otherwise, this is likely to be in breach of equivalent obligations.



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.*

AAPT would like to know:

- What happened, what caused the exception event – this information is will also be required by our Wholesale customers.
- What is being done to resolve the exception event and time frames for fixes - AAPT would need to know expected timeframes in order to consider whether interim services (mobile, mobile data etc) need to arranged to minimise disruptions.

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

AAPT understands that SIAM is an internal Telstra fault management system. AAPT does not have access to this system. The only access AAPT has to Telstra faults is via their customer portal called "LOLS". However, in order for AAPT to have access to fault status information in this system, AAPT would need Telstra to provide the LOLS reference number that the exception is logged under. AAPT considers this to be a potential breach by Telstra of equivalent obligations.