



Australian
Competition &
Consumer
Commission

Assessment of Telstra's Proposed Processes Regarding Pull Through Connections to the NBN

- 1(a) Process for obtaining consents and releases from wholesale customers for pull through
- 1(b) Process for notifying wholesale customers of Pull Through Exception Events

Final decision

May 2014



Australian Competition and Consumer Commission

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List of acronyms and other terms

ACCC	Australian Competition and Consumer Commission
December 2013 Decision Paper	<i>Assessment of Telstra's Resubmitted Draft Required Measures 1(a) and 1(b)</i> , Final Decision Paper, December 2013
Definitive Agreements	Each of: (a) the Implementation and Interpretation Deed dated 23 June 2011 and made between Telstra and NBN Co; (b) the Subscriber Agreement dated 23 June 2011 and made between Telstra and NBN Co; (c) the Infrastructure Services Agreement dated 23 June 2011 and made between Telstra and NBN Co; (d) the Access Deed dated 23 June 2011 and made between Telstra and NBN Co; and (e) any other documents agreed by NBN Co and Telstra to be Definitive Agreements
HFC	Hybrid Fibre-Coaxial
LIC	Lead-in-conduit
LOLS	Linx Online System
Migration Plan Principles	<i>Telecommunications (Migration Plan Principles) Determination 2011</i>
NBN	National Broadband Network
NBN Co	NBN Co Limited
Notification Event	has the meaning given in clause 10.2 of the Migration Plan
Pull through Activities	has the meaning given in clause 10.1(a) of the Migration Plan
Pull Through Exception Event	a circumstance that prevents personnel from being able to complete pull through activities or Cable Rectification
RSP	Retail Service Provider

SSU

Structural Separation Undertaking

Telstra

Telstra Corporation Limited

WBA

Wholesale Broadband Agreement

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1 Executive Summary

'Pull through' is a connection process that NBN Co may use to connect premises in the fibre to the premises (FTTP) areas of the National Broadband Network (NBN) rollout. It involves an NBN Co contractor using an existing copper line or HFC cable to pull a new NBN fibre cable through the lead-in conduit to a premise.

Pull through will cause an outage to the existing communications services provided to the premises until they can recommence over a reinstated line or a temporary cable. A prolonged service outage could have serious consequences for end-users, particularly businesses or those with a medical condition who may rely on their services to remain in contact with support.

As the copper network operator Telstra is well placed to identify which wholesale customers may be affected by pull through and contact them if something goes wrong.

As part of the government's 2010 industry reforms, Telstra was required to prepare a plan that outlined how it would progressively migrate voice and broadband services from its copper and HFC networks to the NBN. This Migration Plan was accepted by the Australian Competition and Consumer Commission (ACCC) on 27 February 2012.

The Migration Plan requires Telstra to develop processes that:

- Telstra will use to obtain consents, releases and undertakings from its wholesale customers for NBN Co to use pull through on wholesale lines (Required Measure 1(a)) and
- set out how Telstra will notify wholesale customers when pull through is unsuccessful (Required Measure 1(b)).

These, and other Required Measures under the Migration Plan, can only be accepted by the ACCC if they comply with the *Telecommunications (Migration Plan Principles) Determination 2011* (the Migration Plan Principles).

On 20 December 2013, the ACCC indicated that it was satisfied that draft Required Measure 1(a) complied with the Migration Plan Principles. However, the ACCC directed Telstra to resubmit draft Required Measure 1(b) because the ACCC was not satisfied that the proposed timeframes for notifying wholesale customers complied with the continuity of services and equivalence requirements of the Migration Plan Principles. In particular, the timeframes did not facilitate wholesale customer management of the service outage for their end-user customers to the degree that it is reasonably in

Telstra's control to do so. Further, the timeframes did not provide for sufficient equivalence in the timing of notification provided to Telstra's retail business units and Telstra's wholesale customers.

Telstra resubmitted a revised draft Required Measure 1(b) on 20 February 2014. This draft included more definite and shorter timeframe commitments that take into account the ACCC's concerns. The resubmitted draft also included other amendments that Telstra submits are necessary for it to comply with the shorter timeframes.

On 25 February 2014, the ACCC published a short issues paper inviting comment on specific aspects of the resubmitted draft.

On 17 April 2014, Telstra withdrew its draft Required Measure 1(b) and resubmitted an amended version in response to feedback the ACCC received from its consultation.

The ACCC is satisfied that Telstra's amended draft Required Measure 1(b) complies with the Migration Plan Principles. The ACCC considers that Telstra's prompt notification commitments ensure that, to the greatest extent practicable, Telstra wholesale customers will be in an equivalent position to Telstra's retail business units to respond to the needs of their end-user customers.

The ACCC considers that Telstra's commitment to provide prompt notifications will mitigate the risk of serious consequences for end-users affected by a service outage occasioned by a Pull Through Exception Event.

The ACCC has approved Telstra's Required Measure 1 and it will now form part of Telstra's Migration Plan.

2 Introduction

On 27 February 2012, the ACCC accepted Telstra's structural separation undertaking (SSU) and approved the draft Migration Plan. The SSU came into force on 6 March 2012 and the Migration Plan on 7 March 2012.

Further detail on the ACCC's assessment of Telstra's SSU and Migration Plan can be found in the ACCC's August 2011 Discussion Paper and February 2012 Final Decision Paper. Both papers are available on the ACCC website.¹

2.1 Pull through Required Measures

Clause 5 of the Migration Plan requires Telstra to develop certain disconnection measures or processes after the Migration Plan commences and submit them to the ACCC for approval. These are known as 'Required Measures'.

Required Measure 1 comprises two processes relating to Telstra's role in 'pull through', which is a connection process that NBN Co may use in those areas where NBN Co continues to roll out fibre to the premises. Pull through involves an NBN Co contractor using an existing copper line or HFC cable to pull an NBN fibre cable through the lead-in conduit (LIC) to a premise. This results in a service outage, which can have adverse consequences for an end-user if not properly managed.

Before NBN Co can undertake pull through it must acquire consent from both the end-user and the copper service provider. Telstra has already provided this consent on behalf of its retail copper services under the Definitive Agreements. Under Required Measure 1, Telstra must develop a process by which it can seek the consent of its wholesale customers for NBN Co to conduct pull through. This is the subject of Telstra's draft Required Measure 1(a).

There may be instances in which pull through is unsuccessful, for example, due to the contractor being unable to complete pull through because of extreme weather. Such events are referred to as "Pull Through Exception Events". In these circumstances, the service outage occasioned by pull through could be prolonged. Due to the adverse impact a prolonged service outage may have on end-users it is important that service

¹ <http://www.accc.gov.au/regulated-infrastructure/communications/industry-reform/assessment-of-telstras-ssu-draft-migration-plan>

providers be notified of Pull Through Exception Events promptly so that they can manage the consequences for their end-users as effectively as possible.

Under the Definitive Agreements, NBN Co is obliged to notify Telstra of Pull Through Exception Events or where the NBN Co contractor has been required to install a temporary cable (to enable the recommencement of existing communications services). Under Required Measure 1, Telstra must develop a process to notify wholesale customers of Pull Through Exception Events and the installation of temporary cables. This is the subject of Telstra's draft Required Measure 1(b).

While Telstra has lodged its proposed processes separately as Required Measure 1(a) and 1(b), these processes form part of a single Required Measure under Schedule 7 of the Migration Plan. The ACCC has therefore assessed draft Required Measures 1(a) and 1(b) together as Required Measure 1.

2.2 Decision making framework for Required Measures

The ACCC must approve a draft Required Measure if it is satisfied that it complies with the Migration Plan Principles.² Otherwise, the ACCC must refuse to approve the draft Required Measure and direct Telstra to resubmit the draft Required Measure amended to take into account the concerns raised by the ACCC.³

Once approved, a Required Measure forms part of the Migration Plan.⁴ If, through operational experience, a provision of the Migration Plan, including an approved Required Measure, is found to not comply with the general principles in the Migration Plan Principles, then the ACCC may issue a direction to Telstra to rectify the Required Measure to ensure that it is compliant.⁵

2.3 Previous ACCC consideration of Required Measure 1

The next table sets out the previous stages in the ACCC's assessment of Telstra's Required Measure 1.

² Available on the Department of Communications website at www.communications.gov.au

³ Migration plan, clause 5.4(d).

⁴ Migration plan, clause 5.4(g).

⁵ Migration plan, clause 26(a).

Date	Required Measure 1(a)	Required Measure 1(b)
Aug 2012	Telstra submitted RM1(a)	
Nov 2012		Telstra submitted 1(b)
Dec 2012	ACCC released discussion paper	
April 2013	ACCC decision not to approve, directed Telstra to resubmit	
Aug 2013	Telstra resubmitted RM1(a) and RM1(b)	
Dec 2013	ACCC indicated intention to approve	ACCC decision to not approve, directed Telstra to resubmit
Feb 2014		Telstra resubmitted RM1(b)
Feb 2014		ACCC discussion paper
April 2014		Telstra resubmitted RM1(b)

Telstra lodged its initial draft of Required Measure 1(a) in August 2012 and its draft of Required Measure 1(b) on 30 November 2012.

On 18 December 2012, the ACCC released a discussion paper on Telstra's draft Required Measures 1(a) and 1(b). This paper highlighted a number of ACCC concerns and sought feedback on whether the draft measures complied with the Migration Plan and Migration Plan Principles. The discussion paper and submissions made to the ACCC in response to it are available on the ACCC's website.

On 5 April 2013, the ACCC decided not to approve draft Required Measure 1 and issued a direction to Telstra to resubmit the draft Required Measures amended to take into account the ACCC's concerns. The ACCC published a Decision Paper detailing these concerns as well as illustrative guidance outlining how Telstra might amend the draft Required Measures. The April Direction and Decision Paper are available on the ACCC's website.

On 13 August 2013, Telstra resubmitted draft Required Measures 1(a) and 1(b) to the ACCC. These revised drafts included substantial improvements, particularly to draft Required Measure 1(a), that addressed the ACCC's concerns raised in the April Decision Paper. However, the ACCC remained concerned about aspects of draft Required Measure 1(b); in particular, the timeframes in which Telstra proposed to notify wholesale customers of Pull Through Exception Events.

On 20 December 2013, following public consultation and further discussions with Telstra, the ACCC directed Telstra to resubmit its pull through Required Measure 1(b). The ACCC issued the December Direction because it was not satisfied that the notification timeframes under draft Required Measure 1(b) complied with the equivalence and continuity of service requirements of the Migration Plan Principles.

The ACCC indicated that it was satisfied that the other aspects of Telstra's proposed process comply with the Migration Plan Principles.

On 20 February 2014, Telstra resubmitted draft Required Measure 1(b) to the ACCC for approval. This draft included shorter and more certain notification timeframes commitments. The draft also included some other amendments that Telstra submits are necessary for it to comply with the shorter timeframes.

On 25 February 2014, the ACCC published a short issues paper inviting comment on specific aspects of the resubmitted measure. Submissions were due by 13 March 2014. The ACCC received one submission from AAPT.

On 17 April 2014, Telstra withdrew draft Required Measure 1(b) and resubmitted an amended draft Required Measure in response to feedback the ACCC received from its consultation on Telstra's 20 February 2014 resubmitted draft Required Measure.

2.4 Concerns outside the scope of Required Measure 1

While Telstra will play an important role in pull through, the success of the end-to-end process will also depend on the involvement of NBN Co, NBN retail service providers (NBN RSPs) and end-users. In the April and December 2013 Decision Papers, the ACCC noted industry concerns about the end-to-end pull through process that were outside the scope of Required Measure 1 but had been raised during ACCC consultation processes.

To assist industry in addressing these concerns, the ACCC reviewed the end-to-end process to identify gaps in the assignment of roles and responsibilities between the parties involved (see **Attachment A** for an overview of the end-to-end process). Based on the general principle that the party that can most efficiently manage a particular risk should be assigned responsibility for doing so, the ACCC suggested a number of improvements that could be made to ensure a smooth migration experience. The ACCC was particularly concerned about ensuring effective arrangements for the protection of medical priority assistance or medical alert service customers.

The December 2013 Decision Paper highlighted a number of improvements that have been made to improve the end-to-end pull through process. In particular, the ACCC noted the amendment of clause C10.2 of NBN Co's Wholesale Broadband Agreement (WBA). This clause now requires NBN RSPs to use "reasonable endeavours" to obtain end-user consent to pull through and to notify NBN Co of this consent if obtained and whether any priority assistance or medical alert services are provided to that premises.

However, the ACCC noted that industry remains concerned about a general lack of clarity as to the operational processes that NBN Co will use to conduct pull through. The ACCC encouraged NBN Co to consider requiring its contractors to promptly notify Telstra of any Pull Through Exception Events. In this regard, Telstra has noted that it does not control the timing of the receipt of notice of a Notification Event from NBN Co, and therefore Telstra cannot provide any assurance as to the overall timing of notification to wholesale customers from the time the Notification Event occurred.

In addition, the ACCC has encouraged NBN Co to engage with industry on the development of an end-to-end operational document. Certain matters could be clarified such as when NBN Co is obliged to ensure that the end-user has an active (copper network based) service before it leaves the premises and the steps that NBN Co will undertake to determine whether a medical alert service is provided to a premises. In regards to the latter concern, the ACCC notes that NBN Co recently announced that it has established a medical alarm register to help support users of medical alarms when migrating to the NBN.

3. Assessment of Telstra's proposed process to obtain consents, releases and undertakings from wholesale customers (Required Measure 1(a))

The Migration Plan requires Telstra to develop a standardised process that enables it to use reasonable endeavours to obtain consents, releases and undertakings from its wholesale customers for NBN Co to undertake pull through on wholesale copper lines.

Under draft required measure 1(a), Telstra proposes to obtain the consents, releases and undertakings on a once off and global basis via Deed Poll. Information on whether a wholesale customer has signed the Deed Poll will then be retained by Telstra so that it can respond to NBN Co inquires on whether a cable can be used for pull through.

In its December 2013 Decision Paper, the ACCC indicated that it was satisfied that draft Required Measure 1(a), as resubmitted on 13 August 2013, complies with the Migration Plan Principles.

4. Assessment of Telstra’s proposed process to notify wholesale customers of Pull Through Exception Events (Required Measure 1(b))

‘Pull Through Exception Events’ have the potential to extend the period of the service outage occasioned by pull through. It is therefore important that service providers are in a position to respond as promptly as possible to the needs of their end-users and manage any long term impact. The three most common Pull Through Exception Events have been identified by Telstra as:

- (i) Prevention of completion of Pull Through Activities—where NBN Co’s fibre has not been passed through the LIC to the premises and cable rectification is not completed.
- (ii) Prevention of cable rectification—where the copper line was fully or partly removed during the pull through process but NBN Co cannot return the previous (or replacement) copper line back into the conduit.
- (iii) Prevention of installation of a temporary cable—where NBN Co is prevented from installing a temporary cable to provide services on the NBN. A temporary cable will only be installed in circumstances where the copper line (or replacement) cannot be reinstated in the conduit.⁶

Clause 10.2 of the Migration Plan requires Telstra to develop a Required Measure outlining how it will give “prompt notification” to affected wholesale customer(s) if NBN Co advises Telstra that a Pull Through Exception Event has occurred or that NBN Co has installed a temporary cable (together referred to as ‘Notification Events’).

Draft Required Measure 1(b) specifies Telstra’s proposed process for notifying wholesale customers of Notification Events. Part 5 outlines the steps that Telstra will take to advise affected wholesale customers and Part 6 contains a flow diagram to illustrate the communications process for Notification Events.

4.1 The ACCC’s December 2013 Decision Paper and Direction

Telstra’s August 2013 draft of Required Measure 1(b) provided that:

⁶ Telstra’s amended draft Required Measure 1(b), p. 3.

‘Telstra expects, in at least 90 per cent of cases, to notify wholesale customers of Notification Events within four business hours of Telstra being notified of a Notification Event, and in all other cases, no later than two business days after Telstra is notified of a Notification Event.’

The ACCC was not satisfied that this proposal complied with the Migration Plan Principles. In particular, the ACCC found that:

- The timeframes are not sufficiently prompt to facilitate the management by wholesale customers of the migration of their customers in a way that minimises the period of any service outage caused by a Notification Event, for example via the timely provision of interim call diversion services.
- The timeframes do not provide, to the greatest extent practicable, for equivalence between Telstra’s retail business units and Telstra’s wholesale customers in the timing of the receipt of notifications of Notification Events.

The ACCC therefore directed Telstra to resubmit draft Required Measure 1(b), with amendments to take into account the above concerns.

The ACCC’s December 2013 Decision Paper went into further detail on each of these concerns. The ACCC emphasised that, given the potentially serious consequences for consumers affected by a prolonged service outage, it is important that wholesale customers be notified as promptly as is reasonably in Telstra’s control to do so.

The ACCC also highlighted that the earlier notification provided to Telstra by NBN Co may enable Telstra to respond more quickly to the needs of its end-users than wholesale customers can respond to their end-users affected by a service outage. To satisfy the equivalence requirements of the Migration Plan Principles, Telstra must commit, to the greatest extent practicable, to notify wholesale customers as close to the time Telstra is notified by NBN Co.

The ACCC also noted the word ‘expects’ rendered Telstra’s compliance with the notification commitment inappropriately uncertain. The ACCC considered that firmer language was necessary to ensure that Telstra would meet any shorter timeframe commitments and thereby minimise disruption to wholesale customer carriage services (to the extent that it is in Telstra’s control).

To assist Telstra in addressing these concerns, the December 2013 Decision Paper outlined two performance standards that the ACCC considers would be sufficiently robust to satisfy the Migration Plan Principles:

- Telstra may commit to a standard that would require it to provide all notifications within two business hours, (this proposal is consistent with industry submissions), or
- Telstra could maintain the tiered structure of its performance standard but reduce the target timeframes so that, e.g., ninety per cent of notifications are provided in one business hour, with all notifications to be given in four business hours.

The ACCC also outlined why it considered that it is reasonably practicable for Telstra to implement and comply with a firm commitment to notify wholesale customers in a shorter timeframe. Pages 23 to 36 of the ACCC's December 2013 Decision Paper provide further detail on the ACCC's decision to direct Telstra to amend the August 2013 draft of Required Measure 1(b).

4.2 Amended draft Required Measure 1(b) provided in February 2014

In February 2014, Telstra submitted an amended version of Required Measure 1(b) for the ACCC approval.

4.2.1 Notification timeframes and content

Telstra's amended draft Required Measure 1(b) included a new commitment to notify wholesale customers:

'as soon as reasonably practicable, but in any event, within 2 Business Hours of Telstra being advised by NBN Co of a Notification Event to the Telstra help desk during its hours of operation as described below, in at least 90% of cases, and within 4 Business Hours in all remaining cases.'⁷

Telstra has removed the word 'expects' from the drafting and has also amended the notification process flow diagram under clause 6 and the reporting commitment under clause 8 to reflect the shorter timeframes within which Telstra proposes to notify wholesale customers.

The amended draft Required Measure 1(b) also included a commitment to provide the wholesale customer with the relevant service address and then direct it to the wholesale customer accessible system LOLS for details of the event.

⁷ Step 6, clause 5.3, Required Measure 1

4.2.2 Communications process to notify wholesale customers

The August 2013 draft of Required Measure 1(b) included a commitment from Telstra to notify the wholesale customer “using a business as usual communications process which Telstra Wholesale uses to notify that Wholesale Customer of service outages.”⁸

In its December 2013 Decision Paper, the ACCC stated that it was “satisfied that Telstra’s commitment to notify wholesale customers via a business as usual (BAU) communications process is sufficient to ensure that Telstra will provide wholesale customers with notifications in a manner compatible with established wholesale customers systems and processes.”⁹

Telstra removed this commitment from resubmitted draft Required Measure 1(b) which now does not specify the communications process that Telstra will use to notify wholesale customers.¹⁰ The process flow diagram has also been amended to include a note that “the process for notification may vary in order to meet the timeframe.”¹¹

In its supporting submission to amended draft Required Measure 1(b), Telstra explains this change on the grounds that:

‘Telstra is unable to commit to its BAU communications process within the shortened timeframe of 2 Business Hours as none of the involved parties have operational experience with Pull Through Exception Events.’¹²

4.3 February 2014 consultation process

The ACCC published a short Issues Paper inviting interested parties to comment on specific aspects of the resubmitted draft Required Measure 1(b).

AAPT provided the only submission in response to the ACCC’s Issues Paper. AAPT supported the amended notification timeframes, but noted that service addresses are not a searchable field in LOLS. AAPT submitted that it would be more appropriate to provide wholesale customers with one or more of the case enquiry, customer reference (number), Telstra reference (number) or the FNN (Full National Number).

⁸ Previous wording of step 6 of clause 5.3 of Telstra’s August 2013 draft Required Measure 1(b)

⁹ *Assessment of Telstra’s resubmitted draft Migration Plan Required Measures, Final Decision*, December 2013, p.31

¹⁰ Step 6, clause 5.3 of amended draft Required Measure 1(b)

¹¹ Clause 6 of amended draft Required Measure 1(b).

¹² Telstra’s supporting submission, p.3-4

AAPT also submitted that there is insufficient detail as to the actual communications process to be used by Telstra to notify wholesale customers, and stated that:

‘Telstra should at the very least provide a clear time line as to when it expects to have a more solid process agreed and in place to manage the exceptions. Whilst AAPT also appreciate that the process may evolve and change based on both Telstra Wholesale and its customers' learnings and experience, AAPT expects that Telstra will, at a minimum, advise wholesale customers of the following:

- who the information will be sent to within Telstra Wholesale
- who within the Wholesale customer's business will be notified, and
- the method of communication, for example whether by email, phone, etc.

As it stands, it appears that Telstra will not know what the process will be until they receive their first exception case. In AAPT's view, current circumstances do not and should not preclude Telstra committing to set timeframes and being proactive in seeking to agree acceptable processes with Wholesale customers.¹³

4.4 Amended draft Required Measure 1(b) provided in April 2014

In April 2014, Telstra submitted an amended version of Required Measure 1(b) for the ACCC approval. The minor amendment related to Telstra committing to provide wholesale customers the fault reference number or full national number associated with the Pull Through Exception Event. This will enable the wholesale customer to search for the event in LOLS, and was inserted in response to AAPT's submission following engagement by ACCC staff.

4.5 ACCC Views

For the reasons set out below, the ACCC is satisfied that Telstra's amended draft Required Measure 1(b), as resubmitted on 17 April 2014, complies with the Migration Plan Principles.

4.5.1 Notification timeframes

Telstra has taken into account the ACCC's concerns raised in its December 2013 Decision Paper by tightening the notification timeframes in amended draft Required Measure 1(b). The ACCC is satisfied that the notification timeframes are now

¹³ AAPT submission, March 2014, p.1

sufficiently prompt to comply with the continuity of service and equivalence requirements of the Migration Plan Principles.

While there will necessarily be some delay in the provision of the notice to wholesale customers, the Migration Plan Principles require, to the greatest extent practicable, that wholesale customers be in an equivalent position to Telstra to respond to the service outage. In this regard, the ACCC has had regard to the following:

- The new tiered timeframes of two and four Business Hours constitute significant improvements on the previous draft timeframes of four business hours and two business days.
- The two hour timeframe is consistent with industry proposals.
- Telstra has now provided a firm commitment to notify wholesale customers as “soon as reasonably practicable” – the two and four business hour timeframes represent an absolute deadline by which Telstra must provide notice.

The ACCC has previously indicated that Telstra’s notification commitment should be sufficiently certain to ensure that Telstra will be obliged to notify wholesale customers within the specified timeframes. The ACCC considers that Telstra’s replacement of the words “we expect that” as a qualifier to the performance standard with a firm notification commitment provides the requisite certainty as to Telstra’s obligation to notify wholesale customers within the specified timeframes.

4.5.2 Content of the notification

The ACCC has previously indicated that the content of the notification must be sufficiently detailed to enable a wholesale customer to determine whether their end-user requires an alternative communications product and/or service and if so, the most appropriate product or service.

Although Telstra has changed the content of the actual notification provided to wholesale customers, it has retained the same level of detail regarding the Notification Event that the ACCC has previously indicated satisfied the Migration Plan Principles, albeit that this detail must now be retrieved by wholesale customer through LOLS.

The inclusion of the fault reference number or FNN in the notification provided by Telstra to wholesale customers will enable the wholesale customer to search LOLS for the details of the Notification Event. This addresses AAPT’s concern about the inability to search LOLS based solely on the service address ID.

4.5.3 Specificity as to the communications process to notify wholesale customers

The ACCC has previously noted that the manner in which wholesale customers are notified will affect a wholesale customer's capacity to manage the period of the service outage for their customers.

In its April 2013 Decision paper, the ACCC raised concerns that the lack of specificity as to communications process that Telstra would use to notify wholesale customers appeared to provide Telstra discretion as to the communication channel to be used to provide notifications to wholesale customers. The ACCC could therefore not determine whether the process promoted equivalence and found that the initial draft Required Measure 1(b) did not comply with section 9(2) of the Migration Plan Principles.

The August 2013 draft of Required Measure 1(b) included a commitment that the Telstra wholesale point of contact will notify the wholesale customer via a "business as usual (BAU) communications process which Telstra uses to notify that Wholesale customer of service outages."¹⁴ In its December 2013 Decision Paper, the ACCC indicated that this amendment had addressed the ACCC's concerns and it was satisfied that this aspect of the August draft complied with the Migration Plan Principles.

Telstra has subsequently removed this commitment on the basis that it is unable to commit to its BAU communications process within the shortened timeframe of two Business Hours.

However, Telstra states in its supporting submission that once the parties have relevant operational experience, Telstra will endeavour to use its BAU process to communicate Notification Events and will work with wholesale customers over time to determine an appropriate communications process.¹⁵

In this regard, the ACCC notes that it is incumbent on Telstra to implement an appropriate communication process that meets the two Business Hour timeframe for notifying wholesale customers.

In addition, the ACCC expects that Telstra would engage with wholesale customers on clarifying the matters that AAPT has outlined in its submission to the February 2014 consultation process. These matters were:

- who the information will be sent to within Telstra Wholesale
- who within the Wholesale customer's business will be notified, and

¹⁴ Telstra's August draft Required Measure 1(b), step 4 of clause 5.3

¹⁵ Telstra's supporting submission, p.3-4

- the method of communication (e.g. email, phone)

4.5.4 Compliance reporting

Revised clause 8 of amended draft Required Measure 1(b) commits Telstra to report on its performance against the new target performance metrics for providing notifications to wholesale customers. Telstra will report on its performance on a quarterly basis through its Migration Plan Compliance Report.

The ACCC is satisfied that this commitment provides the ACCC with sufficient transparency to monitor Telstra's compliance with, and the effectiveness of the notification timeframe commitments and therefore complies with subsection 31(4) of the Migration Plan Principles.

5. ACCC decision

In its December 2013 Decision Paper, the ACCC indicated that it was satisfied that draft Required Measure 1(a), as resubmitted on 13 August 2013, complied with the Migration Plan Principles.

The ACCC is now satisfied that Telstra's amended draft Required Measure 1(b), as resubmitted on 17 April 2014, complies with the Migration Plan Principles.

While relating to distinct processes, Required Measures 1(a) and 1(b) comprise a single Required Measure under Schedule 7 of the Migration Plan. Therefore, the ACCC has decided to approve Telstra's Required Measure 1 and it will now form part of Telstra's Migration Plan.

Attachment A: Overview of pull through

The following is an updated version of the overview included in the ACCC's December Discussion Paper. This version reflects comments provided by NBN Co in its 25 February 2013 submission, and Telstra's amended Required Measure 1(b).

Update: NBN Co has also provided its own overview of the division of responsibilities between the parties involved in the pull through process at page 7 of its submission. NBN Co has indicated that its operational processes used for pull through will be subject to industry consultation.

1. NBN rollout: build drop phase

NBN Co fibre and Premises Connection Device will be installed to the premises at the time of the local network construction. NBN Co has indicated that it will not undertake Pull Through Activities at this stage. **Update:** However, NBN Co installers will perform a preliminary test to determine whether the LIC could be used for pull through.

- Where it is apparent that the existing lead-in-conduit (LIC) cannot be used, even for pull through, the premises will be connected using aerial fibre or by installation of a new LIC.
- Where it is determined that the LIC *could* be used for pull through, the end-user will receive a notice indicating that the NBN connection could not be completed on the day and that the NBN connection can still occur but at a later date when the end-user submits an order for NBN service(s).

2. End-user places order for NBN connection: demand drop phase

At its discretion, NBN Co may declare a region 'Ready for Service' after 90 per cent of premises in the region are passed by NBN fibre. After this date, end-users can contact a retail service provider (RSP) to order an NBN service. When contacted by an end-user, the RSP will:

- Clarify whether the premises is NBN Serviceable by way of NBN service qualification.
- Be required to use reasonable endeavours to ask the end-user to indicate whether they provide consent for NBN Co to perform pull through and so have a temporary outage of their current copper or HFC services. **Update:** NBN Co has included a provision in its WBA requiring NBN RSPs to use reasonable endeavours to obtain end-user consent and pass this information on to NBN Co at the time a connection order is placed

3. Retail service provider places order with NBN Co

When the order is placed with NBN Co, the RSP will:

- Indicate whether the end-user has consented to the performance of pull through/temporary outages on their existing copper and HFC services for the installation of NBN Co equipment.
- Select an available date for the installation from the NBN Co booking system.
- **Update:** NBN Co has included a provision in its WBA requiring NBN RSPs to provide NBN Co with information on whether a priority assistance or medical alert services (or comparable services) are provided to end-user premises.
- Communicate the installation date to the end-user.
- Make arrangements for the provision of interim call diversion services if necessary.

4. NBN Co attends site to connect premise

The NBN Co installer:

- Undertakes an inspection of the LIC to determine whether they believe that pull through can be completed on the day.
- If the installer decides that pull through can be completed they will check *with Telstra* whether there are any cables that cannot be used for pull through.

It is at this point that Telstra will check whether a wholesale customer that provides services to the premises has signed the Deed Poll and therefore provided the necessary consents, releases and undertakings for pull through to occur (Required Measure 1(a)).

NBN Co has stated that it will use the information provided by Telstra in combination with other information that it may have available to it to determine whether a LIC cable can or cannot be used for pull through). NBN Co has confirmed that it:

- Does not intend to contact any Telstra wholesale customer at this time to confirm consent for pull through.
- Will not need to seek end-user consent for pull through on the day (because this will have been provided at the time the connection order is placed).
- Will not perform pull through at any premises where information provided by the RSP at the time the connection order was placed indicates that there is a priority assistance, medical alert or other comparable service provided to the premises.

5(a). If pull through can be undertaken

NBN Co will:

- Inform the end-user/nominated representative when an outage starts and ends.
- Reinstate the copper or HFC line used for pull through and test whether it works. NBN Co has indicated that the NBN Co installer will be expected to attempt to reconnect the cable used for pull through except in limited circumstances—for example, a complete migration event.
- Contact Telstra or a wholesale customer to test whether the reinstated line works.

5(b). If pull through fails

The ACCC understands that NBN Co will:

- Seek to install a temporary cable.
- Notify the end-user that pull through has not been successful.
- Contact Telstra to inform it that a “Pull Through Exception Event” has occurred.

It is at this point that Telstra will notify any affected wholesale customer that a “Pull Through Exception Event” has occurred. Telstra commits to notify wholesale customers within 2 business hours of receipt of a notice from NBN Co in ninety per cent of cases and in all other cases within 4 business hours (Required Measure 1(b))

- 1 Make arrangements to address service outage as soon as possible.
- 2 **Update:** NBN Co has emphasised that a Pull Through Exception Event may occur other than where pull through fails—for example, where an end-user has withdrawn their consent or where there is a force majeure event that stops the NBN rollout.

Attachment B: Required Measures and relevant regulatory requirements

Required Measure 1(a): Process for obtaining consents and releases from wholesale customers for NBN Co to use pull through during the connection process	
<p><i>Relevant Migration Plan Principles</i></p> <ul style="list-style-type: none"> ▪ Section 8 – Disconnection of carriage services (General principle) ▪ Section 19 – Control of disconnection timing and processes ▪ Section 21 – Equivalence regarding disconnecting Telstra retail business units and wholesale customers (General principle) 	<p><i>Relevant Migration plan clauses</i></p> <ul style="list-style-type: none"> ▪ Clause 10.1 – Consents for Pull Through Activities
Required Measure 1(b): Process for notifying Wholesale customers that Pull Through Exception Events have occurred	
<p><i>Relevant Migration Plan Principles</i></p> <ul style="list-style-type: none"> ▪ Section 8 – Disconnection of carriage services (General principle) ▪ Section 19 – Control of disconnection timing and processes ▪ Section 21 – Equivalence regarding disconnecting Telstra retail business units and wholesale customers (General principle) 	<p><i>Relevant Migration plan requirements</i></p> <ul style="list-style-type: none"> ▪ Clause 10.2 – Notification of a Pull Through Exception Event