



15 October 2018

Mr Robert Wright
General Manager, Insurance, Water and Wireline Markets Infrastructure Regulation
Australian Competition and Consumer Commission
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Melbourne VIC 3000
Email robert.wright@acc.gov.au

Copy To:

Ms Katie Young
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Mr Rod Middleton
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Dear Mr Wright

Notification of Telstra's performance being affected by a Force Majeure Event under Telstra's Migration Plan

As the ACCC is aware, the Australian Communications and Media Authority (**ACMA**) has recently made the *Telecommunications (NBN Continuity of Service) Industry Standard 2018 (Standard)*¹ which came into effect on 21 September 2018. The Standard imposes obligations on carriage service providers (**CSPs**), carriers (including Telstra) and NBN Co to ensure that customers are not left without a working telecommunications service for extended periods during the migration to the NBN.

Telstra has determined that there are circumstances where complying with its obligations under the Standard may prevent or delay Telstra from complying with its obligations under the Migration Plan, including Telstra's Migration Plan obligations which restrict its ability to supply Copper and HFC Services at a Premises within the Fixed Line Footprint after a Rollout Region becomes Ready for Service.

Under clause 4.5 of the Migration Plan, Telstra will not contravene the Migration Plan, or be liable for any delay or failure to perform obligations, to the extent that the delay or failure is caused by a Force Majeure Event. The full set of Force Majeure Events is set out in the Migration Plan, but includes any act or omission of any government or government agency, including laws and regulations. This includes the actions of the ACMA as a government agency in making the Standard, which has the effect of a new regulation. Telstra is also under a statutory obligation to comply with the Standard.

In this case, Telstra considers that under the Standard, where Telstra is the NBN CSP and is required to 'reconnect' the customer's legacy service in accordance with section 11 of the Standard or to provide reasonable assistance to other CSPs to enable them to comply with their 'reconnection' obligations, this may prevent Telstra from complying with its obligations

¹ The Service Continuity Standard was made by the ACMA under s 125AA(1) of the *Telecommunications Act 1997* (Cth) and in accordance with sections 5 and 7 of the *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017*.



under the Migration Plan which restrict its ability to supply Copper and HFC Services at the relevant Premises.

In these circumstances, Telstra considers that the Standard constitutes a Force Majeure Event, which could prevent or delay Telstra from performing its obligations under the Migration Plan with respect to a particular Premises until its obligations under the Standard in relation to that particular Premises are discharged, at which time Telstra will continue to comply with its obligations under the Migration Plan. This letter therefore provides you with notification under clause 4.5(c)(i) of the Migration Plan.

In accordance with clause 4.5(c)(ii) of the Migration Plan, Telstra will notify the ACCC in the event that it becomes aware that the Force Majeure Event has ceased to affect its obligations under the Migration Plan (e.g. in the event of repeal of the Standard).

Relatedly, Telstra has agreed a variation to the Definitive Agreements with NBN Co, to enable Telstra to comply with its obligations under the Standard. A confidential copy of that Agreement is separately provided to you for your reference.

Telstra would be pleased to provide the ACCC with any further information, as required. Please contact Kim Hilton-Cowie on (02) 9866 2001 if you have any questions in relation to this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jane van Beelen'.

Jane van Beelen
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Legal and Corporate Affairs
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