



Optus Submission to ACCC in response to
Migration Plan Required Measures
relating to the Pull Through connection process

Discussion Paper

February 2013

PUBLIC VERSION

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Section 1.

Overview

- 1.1 Optus welcomes the opportunity to provide comments on Required Measures 1(a) and 1(b) in relation to the Pull Through connection process and Pull Through Exception Event and whether these comply with the Migration Plan Principles and the Migration Plan.
- 1.2 Optus shares many of the concerns raised by ACCC in the discussion paper, in particular a number of issues relating to the process of Pull Through and which party should be liable for any loss or claim that may result from Pull Through activities. Optus is concerned that the Required Measures 1(a) and 1(b) are inadequate in providing a satisfactory end-user experience throughout the Pull Through process.
- 1.3 Required Measures 1(a) and 1(b) do not appropriately satisfy the Migration Plan Principles or the Migration Plan. This includes the General Principles (Disconnection of Carriage Services, Equivalence Regarding Disconnecting Telstra Retail Business Units and Wholesale Customers and Use of Adequate Processes); the Specific Principles (Coordination of Connection and Disconnection) and relevant provisions of the Migration Plan (Disconnection of Copper Services during the Migration Window and Pull Through Activities).
- 1.4 Required Measure 1(a) and (b) fail to meet the principles for the following reasons:
 - Processes specified are inadequate;
 - The responsibilities for rectification are unclear;
 - Notification processes are deficient or absent;
 - Consultation with industry participants has been inadequate; and
 - There is a lack of equivalency for wholesale customers.
- 1.5 A critical concern is that whilst wholesale customers will have no visibility of or control over the Pull Through process, nevertheless they are expected to assume almost all liability for the process. This is neither reasonable nor acceptable.
- 1.6 The Required Measures should allow for notification of Pull Through to all customers, particularly wholesale customers, so that wholesale customers can better manage their end-users during the process.
- 1.7 The Required Measures should clearly state that Pull Through should only be used when the fibre cable cannot be pushed through and when the wholesale customer places an order on behalf of the end-user, i.e. Pull Through is only used in the demand drop process.
- 1.8 The global consent should not be in the form of a deed poll; it should be set out by means of a three party agreement between NBN Co, Telstra and the wholesale customer. The responsibilities of each party should be clearly stated with all relevant parties being accountable for their part of the process.
- 1.9 To date industry consultation on the development of Required Measures has been inadequate and has failed to reflect the multi-party nature of the process. Optus considers that effective processes for Pull Through can only be developed and agreed through a multi-party forum where all relevant parties can participate in the discussion of the end to end process and Telstra and NBN Co can incorporate the suggested changes into the processes.

Section 2.

Pull Through Activities

- 2.1 Pull Through is the process when connecting NBN fibre to a Premises, the fibre cable cannot be pushed through the existing lead in conduit (LIC). It will require disconnecting the existing fixed line cable, attaching the new fibre cable to the existing cable and then using the existing cable to pull the new fibre cable through the LIC. Pull Through will always result in interruption of service to the end-user.

Pull Through as a Demand Order

- 2.2 Optus shares the ACCC's understanding that Pull Through will not be used in the 'build drop' roll out of NBN services and Pull Through will be used in the 'demand drop' rollout where the end-user places an order with a RSP (a wholesale customer of NBN Co) the wholesale customer and the NBN fibre cable cannot be pushed through the LIC. This understanding is not explicitly stated in the Required Measure. The current definition is broad and applies to all circumstances where the lead in cable is used as a draw wire through the lead in conduit. Optus believes that the Required Measure should be updated by amending the definition of Pull Through Activities to define the circumstances when it will be utilised. The amended definition should state that Pull Through should only be used:

- when there are less than 10 pairs;
- when the end-user has given consent;
- when there is no priority service, medical alert or similar on the line; and
- when all wholesale and end-user customers related to the end-user services on that line have consented.

Global Consent

- 2.3 Optus agrees that given the complex nature of Pull Through and the number of parties affected by the Pull Through process, it is efficient for wholesale customers to provide a global consent for NBN Co to undertake Pull Through during the demand order connection process. It is also necessary to provide consent from wholesale customers for NBN Co to use and disclose confidential information for the purpose of providing Pull Through. However, Optus cannot agree to the global consent taking the form of a deed poll. A deed poll by nature is a one sided instrument that places responsibilities and liabilities on one party while it releases other relevant parties of any accountabilities and liabilities. Wholesale customers impacted by Pull Through will have virtually no control over the event, yet the wholesale customer is made accountable when issues arise as a result of Pull Through and is fully liable in the event of loss or claim arising as a result of Pull Through. In contrast, those parties, Telstra and NBN Co, which have control over the process of disconnecting and reconnecting an end-user's service are not liable for any loss or claim made by the end-user.
- 2.4 As a wholesale customer Optus should not have to provide a release in favour of NBN Co for certain losses or claims relating to Pull Through. Optus believes that the answer to effective global consent should be in the form of tri-party agreement between NBN Co, Telstra and the wholesale customer. This agreement should clearly state each party's roles and responsibilities; what happens in the case of loss; what happens when a claim arises as a result of Pull Through and the SLAs for each component of the process.

- 2.5 The SLA on the Pull Through process should form an important and essential part of the agreement, in particular:
- There should be SLAs on the duration of Pull Through. As the end-user is given an appointment time, it is reasonable to expect the Pull Through to be completed by NBN within this timeframe. Failure to do so should result in NBN Co contacting Telstra who will then inform the wholesale customer that pull through has failed.
 - More importantly the suggested timeframe for notification of a Pull Through Exception Event is unacceptable. Optus fails to see why it would take up to four hours in 90% cases for the notification to reach wholesale customers. Optus submits that the wholesale customer should receive notification within 2 business hours in all cases.
 - There should also be an obligation on NBN Co that the end-user will not be without a service at the end of the Pull Through activity i.e. before NBN Co leaves the end-user's premises there will be reinstatement of the copper line or installation of a temporary cable.

Industry Consultation

- 2.6 Given the complexity of the Pull Through process, Optus considers that there has been lack of effective industry consultation on the development of the Required Measures for Pull Through. While Telstra provided a proposed draft Required Measure prior to tabling this with the ACCC, Telstra has largely ignored the comments and suggestions made by industry participants. Its responses to the comments made and issues raised by wholesale customers did not address the fundamental issues such as:
- inadequacy of the process which will not be able to facilitate efficient and timely disconnection of wholesale carriage services as specified in the Migration Plan Principle (MPP8).
 - inappropriate use of a Deed Poll for consent which has essentially removed the ability of wholesale customers to have any control over the Pull Through process yet forced liability and accountability on to the wholesale customers. This is not in keeping with the Migration Plan Principles in particular MPP 19 regarding the control of disconnection timing and processes.
 - lack of equivalent treatment of wholesale and Telstra's Retail Business Units which directly contravenes Migration Plan Principle MPP21. Telstra Retail Business Units will potentially have access to Pull Through and Pull Through Exception Event information ahead of the wholesale customers.
- 2.7 In fact, the version of the Required Measure that Telstra has tabled with the ACCC has changed very little from the original version which was sent to industry participants for comment. Optus believes that effective consultation will only be achieved from an industry forum with proper representation by all industry participants – NBN Co, Telstra, regulators, wholesale customers and other interested parties where the complex process of pull through can be properly mapped out and appropriate responsibilities and accountabilities assigned to the relevant parties.

Notification of Pull Through Exception Event

- 2.8 Optus submits that it is essential for relevant wholesale service providers should be notified of a Pull Through Exception Event as quickly as possible. The current drafting commits Telstra to notifying the Wholesale Customer within four business hours in 90% of cases but

only after NBN Co has notified Telstra. However, there is no indicative timeframe for NBN Co to notify Telstra; the Required Measure stated that 'NBN Co is obliged to notify Telstra of a Pull through Exception Event as soon as practicable'. The NBN notification timeframe must be included in the tri-party agreement. NBN Co must be obliged to notify Telstra of the Exception Event within one hour of it taking place. To ensure that all end-users' expectations are managed effectively, Telstra should at this point record this Exception Event in its fault reporting system and immediately notify wholesale customer that an Exception Event has taken place within one hour of entering it into its system. This will enable wholesale customers to manage any end-user enquiries regarding disruption of service and provision of a temporary service or other services such as call diversion. Optus considers that the responsibility for notification of Pull Through Exception Event rests with both NBN Co and Telstra.

Wholesale and Retail Equivalency

- 2.9 The current proposed process highlights a potential lack of equivalence between wholesale customer and retail customer. When NBN Co notifies Telstra of the Exception Event and this is registered in Telstra's system, Telstra's Retail Business Units will have the ability to access this information immediately; in contrast wholesale customers will not have access to this until being notified by Telstra. This time lag highlights the inequality between Telstra's retail and wholesale customers. This can be mitigated by ensuring wholesale customers are notified within 1 hour of NBN Co notifying Telstra of a Pull Through Exception Event.

Addressing ACCC Questions

- 2.10 The end to end Pull Through process need to be developed with all relevant industry participants to ensure the end-user's service interruption is minimised. The responsibility of all relevant parties within the Pull Through process needs to be clearly defined. Optus has provided detailed responses to each of the ACCC's questions below.

Q1. Does the process for obtaining wholesale customer consents for Pull Through comply with the requirements of the Migration Plan and Migration Plan Principles?

- 2.11 The process for obtaining wholesale customer consents for Pull Through does not comply with the requirements of the Migration Plan Principles and Migration Plan. In particular, the process does not satisfy the general principles set out in the Migration Plan Principles such as Part 3 Division 1 Section 8 (MPP8), Part 3 Division 3 Section 21 (MPP21), Part 3 Division 4 Section 23 (MPP23) and Part 3 Division 6 Section 28 (MPP28). It also does not satisfy the specific principles set out in Part 3 Division 1 Section 11 (MPP11) of the Migration Plan Principles. The process is also not adequate in supporting part 10 (MP10), part 19 (MP19) and part 36 (MP36) of the Migration Plan.

MPP8 – General Principle – disconnection of carriage services

- 2.12 This general principle states that the Migration Plan has to ensure the efficient and timely disconnection of wholesale carriage services. The lack of service level agreement for the current proposed Pull Through process certainly does not facilitate the efficient disconnection of wholesale carriage services. There is no obligation on NBN Co to perform Pull Through efficiently to ensure minimum disruption of end-user service and more importantly the process is inadequate in addressing Pull Through Exception Event, further there are no SLAs that require NBN Co to provide an alternate service when a Pull Through Exception Event takes place.
- 2.13 The current process does not give any autonomy to wholesale customers over decisions about the timing of disconnection from a separating network as wholesale customers do not

get notified when Pull Through takes place. This lack of notification of Pull Through means that wholesale customers are unable to proactively manage end-users in the event of an exception.

- 2.14 In order to remedy this, the Pull Through Required Measure should support a process where wholesale customer is notified of an Exception Event resulting from Pull Through immediately. Given Pull Through will only take place within the demand order process and not during build drop, the instances of Pull Through should be relatively small and the incidences of Pull Through Exception Events even smaller. Therefore, it is not unreasonable to ask that wholesale customers be notified immediately by either NBN Co or Telstra when a Pull Through Exception Event occurs. The Required Measure should be modified to also include appropriate SLAs on Telstra and NBN Co regarding Pull Through and Pull Through Exception notifications. The SLAs could be incorporated as part of the global consent that is obtained from Telstra and its wholesale customers. The SLAs should be clearly stated in the multi-party agreement which Optus believes is the only appropriate instrument to address the Pull Through process and global consent.

MPP21- General Principle – equivalence regarding disconnecting Telstra retail business units and wholesale customers

- 2.15 Optus considers that the Pull Through arrangements are unlikely to provide for equivalent treatment of wholesale and retail business units. Given that Telstra will be logging notification events in its NBN Transition Tool system and its fault management system, Telstra Retail’s Business Units potentially have access to these Telstra systems; therefore, they will obtain the required information ahead of wholesale customers. Wholesale customers will have to wait for the Telstra helpdesk to send notification via email after Telstra’s systems have been updated.
- 2.16 Optus considers that it would be more efficient for Telstra to log a fault in its fault reporting system upon receiving notification from NBN Co regarding Pull Through Exception Event. It could then notify the wholesale customer that a fault has been logged for a service current managed by the wholesale customer. This will result in a more seamless process of logging, and tagging faults providing wholesale customers with the necessary information to manage the end-user during a Pull Through Exception Event.

MPP23 – General Principle – use of adequate processes

- 2.17 MPP23 requires that Telstra to ‘work in good faith with other industry participants’ in developing processes to facilitate migration. It is Optus’ experience that Telstra’s consultation with industry participants in developing the Migration Plan and the Required Measures has been less than effective. The fundamental concerns and issues raised by Optus and other industry participants during the consultation process have not been addressed by Telstra as detailed in section 2.3 above.

<p>Q2. 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?</p>

- 2.18 Pull Through is a quite complex operational process as a number of parties are involved in the Pull Through process and the end-user’s service is interrupted by this process. As a result, Optus understands the need for global consent since without it Pull Through may never take place which will have a negative impact end-users. However, Optus is of the opinion that global consent will only work with the following conditions:

1. Affected wholesale customers are notified Pull Through Exception Event immediately. This will assist wholesale customers manage their end-user expectations, minimise interruption to the end-user's service and assist in implementing diversions where applicable. This notification will enable a better end-user experience.
2. The global consent is obtained from all wholesale customers. As there may be a number of wholesale customers providing services to a single end-user, without the prior consent of all wholesale customers, Pull Through cannot take place. Therefore, the consent from all wholesale customers has to be obtained prior to Pull Through taking place.
3. The consent should not be in the form of a deed poll. A deed poll by nature puts the liability on the party providing it; in this case the liability has been forced on the wholesale customer. However, the wholesale customer has no control over the timing of Pull Through and in fact would not even know when Pull Through takes place, yet the wholesale customer has to provide support to the end-user and be responsible for managing the end-user during Pull Through, including when an Exception Event occurs. Furthermore, the wholesale customer is liable in the event of claims and damages arising out of the Pull Through process. Therefore, the consent should be in the form of a three-party agreement, not a deed poll.

Q3. 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?

- 2.19** Optus considers that a global Pull Through consent should be obtained through three-party agreement between NBN Co, Telstra and the wholesale customer. NBN Co should also obtain specific consent from the end-user once NBN Co decides to attempt Pull Through. The end-user consent should be stored by NBN Co and produced to the wholesale customer (who has provided the copper service to the end-user) upon request from this wholesale customer. The end-user consent should also have on it confirmation from the end-user that he/she does not have a priority assistance service or medical alerts on the current copper service. These consents will contribute to a more efficient Pull Through process and will also fairly distribute responsibilities between all relevant parties to the Pull Through process.

Q4 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?

- 2.20** Prior notification of Pull through itself is unlikely to improve overall management of the customer. More critical is ensuring there is a well-defined set of obligations on NBN Co and Telstra. This should include:
- NBN Co provides acceptable SLAs for performing Pull Through. This will provide assurance to minimise the duration of the end-user without a service.
 - NBN Co provides assurance that the copper will be reconnected or a temporary service cable will be installed before NBN Co leave the end-user Premises, ie NBN Co provides the assurance that the end-user will not be left without a service at the end of the Pull Through process.
 - NBN Co has obtained the relevant end-user consent for performing Pull Through.

- NBN Co notifies Telstra within one hour of Pull Through Exception Event taking place, and Telstra notifies wholesale customers within one hour of receiving notification from NBN Co of a Pull Through Exception Event.

Q5 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?

2.21 The release under draft clause 1.6 (c) of the Deed Poll removes NBN Co and Telstra of all responsibilities with regards to ensuring the end-user will have minimum interruption of service and will have cable rectification as soon as possible. This puts an unfair onus on the wholesale customer to minimise the impact to end-user's service and managing the end-user's expectations. However, the wholesale customer will not even know that Pull Through has taken place and will have no control over the Pull Through process. This exclusion provides end-users with no comfort that any service outage resulting from Pull Through will be rectified.

Q6 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?

2.22 The Required Measure does not provide appropriate assurance on information supplied regarding the existence of priority assistance and medical alert customers. It needs to be recognised that the wholesale customer would only be aware of any of such service through checking its data base upon NBN Co contacting the wholesale customer. In the case of the gaining wholesale customer who is not the current provider of the end-user's service, the wholesale customer will have no knowledge of the type of service the end-user may have. The wholesale customer will be relying on the end-user to provide this information. Optus considers that the responsibility for obtaining end-user consent to Pull Through should lie with NBN Co. This will put NBN Co in the best position to obtain information from end-user on whether the end-user has priority assistance service or medical alerts.

Q7 What information do wholesale customers currently provide Telstra about priority assistance and medical alert services?

2.23 Optus provides priority assistance information to Telstra for wholesale Line Rental customers; however, there is no mechanism to provide this information for ULL customers.

Q8 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?

2.24 As NBN Co should be obtaining end-user consent upon deciding to attempt Pull through, therefore, NBN Co should obtain information from end-user on whether the end-user is a priority assistance service or medical alert customer. In the event that an end-user is unsure whether there is priority assistance or medical alert services on the existing cable, NBN Co should contact Telstra to verify this information. Telstra should have this information in its data base and should be able to provide confirmation to NBN Co. Telstra and NBN Co should also be able to contact the wholesale customer for further confirmation if required. If a medical alert or priority service flagged for the service, NBN Co should then inform end-user that Pull Through cannot take place due to the nature of the service. If the end-user believes that the service should not be tagged as a medical alert or priority service, the end-user can then contact the wholesale customer so that the wholesale customer can then amend this with Telstra.

Q9 What other measures could be established to provide such additional assurance?

- 2.25** Wholesale customers could be required to ask the end-user at the time the order is placed whether there is a medical alert or priority service feature on the existing service. The end-user's consent to Pull Through should have on it the indicator that the end-user believes that the end-user does not have priority assistance service or medical alert service.

Q10 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?

- 2.26** Optus considers that NBN Co and the end-user should as a minimum be able to test that the access service is restored by the detection of dial tone. If further testing is required, then the end-user should contact the wholesale customer to arrange this. It should not be a requirement on the wholesale customer to perform testing in all cases. It will create an unnecessary burden on wholesale customers and unnecessarily complicate the pull through restoration process.

Q11 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?

- 2.27** As presented in the answer to question 1, the proposed process for notifying wholesale customers that the notification event has taken place does not comply with the requirements of the Migration Plan and Migration Plan Principle MPP21- General Principle – equivalence regarding disconnecting Telstra retail business units and wholesale customers. Optus considers that Telstra's Retail Business Units will have been made aware of a notification event ahead of wholesale customers. Furthermore, the lack of SLAs relating to the notification event and the inadequate timeframe it takes for NBN Co/Telstra to notify wholesale customers highlight that the notification process does not comply with MPP8 i.e. efficient and timely disconnection of wholesale carriage services.

Q12 Within what time period would wholesale customer 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?

- 2.28** The notification of Pull Through Exception Event should be given to wholesale customers within 2 business hours of NBN Co determining that an Exception Event has taken place. This is the minimum requirement for managing end-user's service in order to minimise interruption. Given there are a number of channels of communication existing between NBN Co, Telstra and wholesale customers and designated points of contact within each entity, Optus considers that notification within 2 business hours is quite reasonable.

Q13 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.

- 2.29** The following information will be required by wholesale customers in order to effectively manage their end-users and ensure a better end-user experience:

- end-user service affected by the Exception Event,
- when did Pull Through take place,
- the type of Exception Event,

- what temporary solution NBN Co has provided, and
- the anticipated rectification timeframe.

2.30 NBN Co should also update the wholesale customers periodically until the Exception Event is resolved.

<p>Q14 Can wholesale customers access SIIAM records to check the fault status of a line without contacting Telstra Wholesale?</p>
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2.31 To our knowledge Optus currently does not have direct access to SIIAM records. Optus utilises Telstra's Linx Online Service module to log and monitor faults in relation to WLR, DSL and ULL services. However, if a fault is not logged then Optus will not have any visibility of the service issue that an end-user may be experiencing as a result of Pull Through. In the case of Pull Through Exception Event, as Telstra does not log a fault upon receiving the notification from NBN Co, it merely flags it in its assurance system, Optus will have no visibility of the situation. To Optus' knowledge, there is also no mechanism from Linx Online system to send an alert to Optus informing it that a Pull through Exception Event has taken place.

2.32 As highlighted previous, Telstra retail customers have an advantage over Telstra wholesale customers as they may have access to the relevant Telstra systems while Telstra wholesale customers have to rely on Telstra proactively notifying them regarding any pull through Exception Events.