



Australian
Competition &
Consumer
Commission

Telstra's proposed variation to the Migration Plan

Final Decision

July 2016

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Executive Summary

The Australian Competition and Consumer Commission (ACCC) has approved Telstra's proposed variation to the Migration Plan (the proposed variation). The ACCC is satisfied that the varied Migration Plan complies with the specific legislative requirements.

The Migration Plan sets out the steps that Telstra will take to progressively migrate voice and broadband services from its copper and hybrid-fibre coaxial (HFC) networks to the NBN as it is rolled out across Australia.

The Migration Plan was previously revised in June 2015 to incorporate changes associated with the move to a multi-technology mix (MTM) National Broadband Network (NBN).

The proposed variation reflects improvements to existing arrangements resulting from Telstra and NBN Co's experience to date in migrating end users to the MTM NBN. The proposed changes include:

- expanding the definition and disconnection timeframe for In-Train Order premises to give a greater number of premises more time before mandatory disconnection¹
- amending the regime for disconnecting Direct Special Services and Special Service Inputs to accommodate NBN Co's release of additional wholesale product functionality by access technology
- formalising interim arrangements that are already subject to ACCC forbearance and
- correcting minor errors and incorporating new reporting requirements agreed with the ACCC.

The ACCC's mandate is limited to approving the proposed variation if the varied Migration Plan is consistent with the Migration Plan Principles, or refusing to approve the proposed variation if it is not consistent.

The ACCC welcomes Telstra's preparedness to identify aspects of the Migration Plan where additional flexibility has been needed, and would expect Telstra to come forward with further amendments where necessary in light of future operational experience.

As the first disconnection date (12 November 2018) for a class of Special Services has been agreed by Telstra and NBN Co, Telstra is now obliged under the Migration Plan to develop suitable measures to assist industry in migrating Special Services to the NBN.

¹ In-Train Orders premises are premises which can stay connected past the Disconnection Date in a region for a limited period.

1 Introduction

On 9 May 2016 Telstra submitted a proposed variation to the Migration Plan to the ACCC. The proposed variation included changes to In-Train Order and Special Services arrangements and formalised interim arrangements subject to ACCC forbearance.

On 20 May 2016 the ACCC published a discussion paper seeking feedback from interested stakeholders on the proposed changes and received submissions from NBN Co and Optus.

NBN Co supported the proposed changes, while Optus raised some concerns.

In particular, Optus was concerned that:

- the proposed changes to In-Train Order arrangements would risk service continuity for complex business customers as retail service providers (RSPs) may not have sufficient time to complete migration activities and
- the proposed changes to migrate Special Services based on access technology would add an additional and unnecessary layer of complexity to an already complex disconnection process.

On 1 July 2016 Telstra submitted a modified proposed variation to the ACCC in response to Optus' In-Train Order concerns. Optus has confirmed that the modified arrangements are an improvement on the initial proposal and that it would support them.

Now that it has been approved by the ACCC, the varied Migration Plan replaces the previous version of Telstra's Migration Plan and forms part of Telstra's Structural Separation Undertaking.

2 Background

2.1 Move to Multi-Technology Mix NBN and Revised Migration Plan

On 26 June 2015 the ACCC approved the revised Migration Plan that included changes to reflect the MTM NBN rollout model.

The MTM variations to the Migration Plan were approved with the understanding that some processes, such as the In-Train Order provisions, may need to be revised in the future once Telstra and NBN Co had some experience in migrating customers to the MTM NBN.

2.2 Interim Arrangements

Since the approval of the revised Migration Plan, Telstra and NBN Co identified aspects of the Migration Plan where additional flexibility was needed to ensure service continuity for end users. Telstra sought regulatory forbearance from the ACCC to depart from its obligations under the Migration Plan and extend disconnection timeframes for:

- In-Train Order premises
- fire alarms and lift phone services

- Service Class 0 premises and
- some fibre to the basement premises.

The ACCC did not object to Telstra's requests to implement these revised arrangements as they were consistent with the Migration Plan Principles and provided greater service continuity for end users while not detracting from the overriding objective of migrating services from Telstra's legacy fixed line networks by the end of the NBN rollout. The ACCC's consent was given with the expectation that Telstra would proceed to incorporate these changes in a formal variation to the Migration Plan.

2.3 Replacement Required Measures

Telstra was required to develop and publish replacement Required Measures to reflect revised processes associated with the transition to the MTM NBN rollout model. Telstra has previously consulted with the ACCC on these replacement Required Measures and the ACCC did not object to their publication. The replacement Required Measures form part of Telstra's Migration Plan and are incorporated into the proposed variation in Schedule 7 (Required Measures 1 and 4) and in Schedule 3 (Required Measures 2 and 3).

2.4 NBN Special Services White Papers

On 30 September 2015 NBN Co released a White Paper outlining the replacement of legacy Wholesale BDSL/Ethernet Lite Special Services with the NBN equivalent service, NBN Ethernet Bitstream Service (NBN TSS White Paper No1). These services provide WAN-based connectivity between sites to deliver business grade internet access.

NBN TSS White Paper No1 highlighted that NBN Co is adopting an access technology specific approach for this Special Service class², which means that the availability of Special Service Equivalent Services in the same rollout region may differ depending on the access technology used to provide them.³ NBN TSS White Paper No1 covers NBN fibre-based access technologies (FTTP, FTTN and FTTB) but does not cover other technologies, such as Fixed Wireless, Satellite and HFC.

3 Legislative framework

3.1 The *Telecommunications Act 1997*

The *Telecommunications Act 1997* (the Telco Act) creates the framework for the assessment of the proposed variation to the Migration Plan. Part 33 of the Telco Act sets out the regulatory framework for the structural separation of Telstra. Under

² Special Service (SS) Class (as defined in Schedule 10 of the Migration Plan) means each type of Direct Special Service identified in the "Access Service" column of Table 1 and Table 2 in Schedule 4 and each such SS Class will include each Special Service Input that is certified by a Wholesale Customer to be Service Equivalent to that type of Direct Special Service.

³ Special Service Equivalent Services (as defined in Schedule 10 of the Migration Plan) means in relation to a Special Service Class, products and services that are the same or better than the products and services that Telstra supplies to its customers by means of that Special Service Class at the same or better pricing as at the Plan Commencement Date.

section 557BC(1) of the Telco Act, Telstra may have a migration plan approved by the ACCC in order to implement its chosen structural separation.

The Migration Plan must be approved by the ACCC before it can operate. As the Telco Act does not permit the withdrawal of the existing Migration Plan, Telstra must submit variations to the Migration Plan for approval by the ACCC.⁴

3.2 Migration Plan Principles

The ACCC must assess the proposed variation and consider whether the varied Migration Plan complies with any Migration Plan Principles issued by the Minister pursuant to section 577BB.⁵

The Migration Plan Principles, which were revised by the Government in 2015, define the objectives and scope of a migration plan, and prescribe the way in which the migration plan can deal with certain issues. There are three different types of principles:

- general principles – the overarching principles that must be met by the migration plan, including equivalence and service continuity objectives
- specific principles – further detail about how some of the general principles are to be given effect in the migration plan
- procedural principles – the procedural provisions that must be included in the migration plan.⁶

The general principles include:

- the efficient and timely disconnection of carriage services from the separating network
- minimising disruption to the supply of services to the extent that it is within Telstra's control
- giving wholesale customers autonomy over decisions associated with disconnection to the greatest extent practicable and
- providing for wholesale services to be disconnected in an equivalent manner to retail services to the greatest extent practicable.

3.3 The ACCC's Role

The ACCC's mandate in assessing the proposed variation is limited to:

- approving the proposed variation if the varied Migration Plan complies with the Migration Plan Principles or

⁴ Telco Act, subsection 577BF

⁵ Telco Act., subsection 577BD(2) and subsection 577BDA(2)

⁶ *Telecommunications (Migration Plan Principles) Determination 2015*, s.7(1)

- refusing to approve the proposed variation if the varied Migration Plan does not comply with the Migration Plan Principles.

The ACCC does not have discretion to seek changes to the proposed variation merely based on a preference for a particular approach.

Where the proposed variation adopts an approach that is contained in a specific or procedural principle in respect to a matter, the proposed variation is taken to comply with all the principles in respect of that matter.

The general principles are relevant if the proposed variation does not accord directly with a specific or procedural principle, or if a matter is not dealt with at all by a specific or procedural principle. If this is the case, the ACCC must consider the matter in light of all the principles, including the general principles, and decide whether those provisions of the proposed variation should be accepted.

4 The ACCC's Final Decision

The ACCC has decided to approve Telstra's proposed variation to the Migration Plan (as submitted on 9 May 2016 and revised on 1 July 2016) pursuant to section 577BF(3) of the Telco Act.

The ACCC has considered the proposed variation in light of submissions made in response to the discussion paper issued pursuant to section 577BF(4) of the Telco Act and the Migration Plan Principles. The ACCC has concluded that the varied Migration Plan complies with the Migration Plan Principles.

The varied Migration Plan replaces the current version of the Migration Plan and all interim arrangements. As the Migration Plan is part of Telstra's SSU, a breach of the Migration Plan is enforceable as a breach of the SSU.

5 Assessment of the proposed variation

5.1 Overall assessment of compliance with the Migration Plan Principles

The ACCC is satisfied that the varied Migration Plan is consistent with the Migration Plan Principles.

As a number of aspects of the proposed variation do not accord directly with a specific or procedural principle, the ACCC has assessed these in light of all the principles including the general principles.

The ACCC considers that Telstra's proposed variation reflects improvements to the migration process following greater industry experience in migrating customers. The proposed changes provide greater assurance and certainty to end users that they will not prematurely lose their voice and broadband services prior to migrating to the NBN.

In particular, Telstra's proposed variation promotes the efficient and timely disconnection of carriage services from Telstra's legacy networks and seeks to minimise disruption to the supply of services to the extent that it is within Telstra's control.

A more detailed assessment of the proposed changes is discussed below.

5.2 Changes to In-Train Order arrangements

The In-Train Order provisions are designed to ensure service continuity for end users, particularly complex premises or premises that are connected to the NBN later in the migration window. The proposed changes to the In-Train Order arrangements are intended to give a greater number of premises more time before managed disconnection.

These arrangements follow several iterations of interim arrangements relating to the timeframe for disconnection and the definition of In-Train Order premises.

The proposed variation seeks to increase the timeframe for disconnection from 120 business days to 150 business days after Disconnection Date and extend the definition of an In-Train Order premises to within four months prior to Disconnection Date.⁷

Telstra also proposed to implement intermediate ‘test points’ whereby NBN Co would notify Telstra at Disconnection Date plus 60 and 90 business days of any completed or cancelled In-Train Orders. A further notification will occur at Disconnection Date plus 120 business days. RSPs would then have a final opportunity to complete the connection of their end-users and their migration to the NBN before Telstra proceeds to disconnect the premises from 30 business days after the relevant test point.

Telstra submits that the ‘test points’ will benefit industry by providing certainty that disconnections will occur on set dates and giving RSPs 60 business days after the Disconnection Date before the first disconnection activity takes place. RSPs will also have an incentive to promptly migrate their customer to the NBN rather than allowing a backlog of migrations to occur closer to Disconnection Date plus 120 business days.

The ACCC raised concerns in its discussion paper about the potential for some services to be prematurely disconnected at the ‘test points’ without an active NBN service connected.

5.2.1 Submissions received

NBN Co supported the proposed changes to the In-Train Order arrangements noting that they will help improve the migration process for industry and end users.

Optus raised concerns about whether the arrangements would provide sufficient lead time for migrating business customers who have more complex service requirements than residential consumers. In particular, Optus considered that Telstra’s proposed changes were likely to have a detrimental impact on business customers who require complex porting and post installation activities, creating a significant risk of managed disconnection occurring before the RSP has completed installation.

Optus proposed retaining the current interim In-Train Order arrangements, whereby managed disconnection occurs at Disconnection Date plus 150 business days, rather than introducing intermediate ‘test points’. Alternatively, Optus noted that if the ‘test

⁷ Interim arrangements extended the definition of In-Train Order premises from within one month to three months prior to Disconnection Date.

points' were implemented, the risk of service discontinuity could be mitigated by building in a 10 business day buffer for NBN Co to advise Telstra of any completions.

5.2.2 Telstra's modified proposed variation

The ACCC brought to Telstra's attention the concerns raised by Optus and requested Telstra to consider further amendments to the In-Train Order arrangements. Telstra subsequently submitted a modified proposed variation in response to Optus' concerns.

Telstra's modified proposal removes the second 'test point' at Disconnection Date plus 90 business days, leaving two 'test points' that serve as triggers for disconnection:

- A 'test point' at 60 business days after the Disconnection Date that picks up any In-Train Order premises that are NBN connected between the date that is four months before the Disconnection Date and the Disconnection Day, and where all orders for an NBN service at the premises have been either NBN connected or cancelled by one business day after the Disconnection Date. Telstra will commence disconnecting these In-Train Order premises as soon as reasonably practicable after the date that is 90 business days after the Disconnection Date.
- A second 'test point' at 120 business days after the Disconnection Date which will pick up any remaining In-Train Order premises. Telstra will commence disconnecting these In-Train Order premises as soon as reasonably practicable after the date that is 150 business days after the Disconnection Date.

Optus has informed the ACCC that the modified arrangements are an improvement on the initial proposal and that it would support them.

5.2.3 ACCC views

Telstra's modified In-Train Order proposal provides RSPs with a period of between 90 to 170 business days to migrate In-Train Order premises in the first 'test point' and up to 150 business days to migrate In-Train Order premises in the second 'test point'.

The ACCC considers that the proposed arrangements now promote greater service continuity and provide RSPs with suitable time to complete end-user installation, complex porting (where required) and post install activities before managed disconnection.

As such, the ACCC is satisfied that the varied Migration Plan is consistent with the Migration Plan Principles in relation to the In-Train Order arrangements.

5.3 Changes to Special Services and Special Service Inputs arrangements

Special Services and Special Service Inputs (business grade services, such as ISDN, data transmission and remote telemetry) are set out in Schedule 4 of the Migration Plan. These services are disconnected on a different timeline to standard voice and broadband services, which are disconnected on a region-to-region basis.

Special Services may be subject to disconnection as part of Telstra's business-as-usual process or as NBN Co develops wholesale services as part of its White Paper process, enabling RSPs to supply equivalent substitute services on the NBN.

Telstra's proposed variation seeks to adopt a disconnection process for Special Services based on the NBN equivalent Special Service class and the access technology NBN Co uses to supply the Special Service class.

As a consequence, the same Special Services supplied on Telstra's copper network may now fall into a different Special Service Class and have different Disconnection Dates depending on the access technology NBN Co uses to supply services to a premises.

Telstra submits this is a reasonable approach in an MTM NBN rollout model as it will help ensure a Special Service is not mandatorily disconnected before NBN Co has confirmed a substitute service. Telstra also submits that this will reduce delays in migrating Special Services as services can be migrated progressively as substitute products become available for each access technology, rather than waiting for all NBN equivalent access products to be developed.

Under the MTM NBN, NBN Co has the ability to determine the access technology used to supply a premises and can change its decision at any point in the migration process. To mitigate the risk of Special Services premises facing imminent disconnection, Telstra proposes to provide a premises with an additional 12 months before managed disconnection if NBN Co changes the access technology in the six months prior to the relevant Disconnection Date.

Telstra's proposed variation also introduces cease sale arrangements for Special Services and Special Service Inputs. Currently, Telstra may accept orders for new services up until the relevant Disconnection Date. Under the proposed variation, cease sale obligations will apply to Special Services at the later of six months before the Disconnection Date or the Ready for Service date plus 10 business days (as for other services).

The ACCC sought feedback in its discussion paper about whether the cease sale arrangements had the potential to restrict end users from accessing suitable services in instances where replacement NBN services are not available in a timely manner.

Status of NBN TSS White Paper No1

Telstra's proposed variation also provided that if the revised arrangements for Special Services came into effect on or before 23 June 2016, then NBN TSS White Paper No1 would be deemed a White Paper and the White Paper Disconnection Date for the relevant Special Service classes would be deemed to be 12 November 2018.

However, Telstra's proposed variation was silent on the status of NBN TSS White Paper No1 if the ACCC did not approve the revised arrangements by 23 June 2016. Telstra stated in its submission in support of the proposed variation that if the proposed variation was not approved by 23 June 2016, it would commence commercial discussions with NBN Co and advise industry of the outcome of those discussions.

5.3.1 Submissions received

NBN Co supported the proposed changes to the Special Services arrangements. In its submission, NBN Co also noted that it had received several questions from industry regarding the exclusion of HFC from NBN TSS White Paper No1. NBN Co noted that it had been able to leverage extensive experience with the Ethernet Bit Stream service over FTTP to develop products for FTTN and FTTB. However, as HFC is not easily comparable to fibre infrastructure and an HFC product was not yet available, NBN Co released NBN TSS White Paper No1 without an HFC product.

Optus did not support Telstra's proposed changes to withdraw Special Services in rollout regions covered by fibre-based access technologies only. Optus submitted that this will add another layer of complexity to an already complex disconnection process and that this will be difficult for RSPs to manage. Optus argued that RSPs do not have the systems to track the level of detail required, such as tracking serviceability and potential disconnection of Special Services down to premise level. Optus submitted that NBN Co should not progress with withdrawing Special Services until the capability is built, at least, on the HFC network.

Optus also submitted that the varied Migration Plan is not consistent with Migration Plan Principle 18, in particular, the categorisation of the 'separating network' by access technology.

Optus supported the additional 12 month period for disconnection of Special Services where the access technology changed within six months of the Disconnection Date where the access technology is available and has been tested. Optus recommended a 24 month lead time for new or untested access technologies, such as fibre to the distribution point, to enable RSPs sufficient time to develop substitute products and process.

Optus submitted that the proposed cease sale arrangements effectively bring forward the date by which Special Services can cease to be supplied, creating a risk that customers may be unable to acquire equivalent substitute services in the absence of the legacy services. In addition, Optus submitted that the proposed changes for Special Services arrangements are at risk of generating unintended consequences as these services are more complex than current services.

5.3.2 Telstra's response

In response to Optus' concerns, Telstra submitted that the additional requirement of the relevant underlying access technology being used to determine whether Special Service/Special Service Input will proceed to disconnection largely reflects the new MTM NBN rollout model and is unrelated to its proposed amendments to the Special Services regime in the Migration Plan.

Telstra also submitted that the disconnection period for Special Services where an access technology is new and untested would be greater than the 24 month period recommended by Optus. For a new or untested access technology, such as fibre to the distribution point, NBN Co needs to issue a White Paper covering the relevant Special Services classes and the associated disconnection timeframe would be 36 months after the White Paper is issued.

Telstra did not provide comments on Optus' other concerns.

Telstra's modified proposal provides that if the ACCC approves the proposed variation by 22 July 2016, then NBN TSS White Paper No1 would be deemed a White Paper and the relevant Special Services class disconnection date of 12 November 2018 would be retained.

5.3.3 ACCC views

The ACCC is satisfied that the varied Migration Plan is consistent with the Migration Plan Principles in relation to the Special Services arrangements.

The ACCC acknowledges the additional complexities of migrating Special Services to a MTM NBN and that as a result of this change, RSPs will likely need appropriate support to identify the disconnection date and cease sale date for Special Services at a premises level.

In this regard, we note that as the first disconnection date (12 November 2018) for a class of Special Services has been agreed by Telstra and NBN Co, Telstra is now obliged under the Migration Plan to develop suitable measures to assist industry in migrating Special Services to the NBN. As part of this process Telstra will need to document appropriate support for RSPs to migrate Special Services at a premises level.

The ACCC considers that delaying the withdrawal of Special Services until suitable substitute products are available on all access technologies would not promote timely migration to the NBN. The ACCC is satisfied that the proposed arrangements for Special Services are appropriate in a MTM NBN rollout model to promote the efficient and timely disconnection of services from Telstra's legacy networks.

The ACCC considers that Telstra's proposed variation accords with Migration Plan Principle 18 as there is scope to categorise the 'separating network' by access technology. This Principle requires Telstra to set out when it intends to disconnect Special Services from a separating network, and does not preclude Telstra from disconnecting Special Services at different times for different access technologies.

The ACCC considers that NBN Co's access technology specific approach and the complementary change to the Migration Plan provides suitable incentives for NBN Co to continue to develop business grade products, which is likely to promote more timely and efficient migration of business grade services overall. The ACCC is satisfied that the Special Services arrangements provide sufficient lead time for new or untested access technologies, such as fibre to the distribution point, to enable RSPs to develop substitute products.

The ACCC acknowledges Optus' concerns that Telstra's proposal to introduce cease sale arrangements for Special Services may create a risk that customers are unable to

acquire equivalent substitute services. However, the ACCC considers that this is a small potential risk as industry will still have approximately 30 months to develop their retail service offerings, and to establish their processes for migrating customers. The ACCC considers there are some benefits to aligning Special Services with other cease sale arrangements to promote the efficient and timely migration and disconnection of legacy services. We note that Telstra has indicated a preparedness to alter the cease sale arrangements through the Required Measure 5 process (if a shorter cease sale period is proposed), or through a subsequent variation to the Migration Plan, if the proposed six month Cease Sale date proved too short.⁸

5.4 Interim Arrangements and Minor Changes

Since the approval of the revised Migration Plan in 2015, the ACCC has consented to Telstra's requests for additional flexibility to:

- extend the interim In-Train Order arrangements until 30 June 2016 (subsequently rolled forward until approval of this variation)
- extend the disconnection of Service Class 0 premises with a Disconnection Date on or before 9 September 2016 and
- extend the disconnection of FTTB premises with a Disconnection Date on or before 9 September 2016, which were notified by NBN Co to Telstra as having changed their access technology from FTTP to FTTB.

Telstra submitted that these arrangements have been working well and are now generally understood by industry. Telstra does not expect any further changes will be needed to address these issues in the long-term and has included the changes in the proposed variation for completeness.

Telstra has also proposed the following minor changes:

- amend the definition of Service Area Module from 4,000 to 5,000 premises to align the definition with the revised Definitive Agreements
- update clause 26.1 of the Migration Plan to reflect the new Quarterly reporting obligations agreed with the ACCC, which consolidate reporting from the Required Measures and
- update the explanatory note in clause 13.1 of the Migration Plan to clarify that the Order Stability Period also applies to the HFC Network.

5.4.1 Submissions received

The submissions did not raise any concerns about these proposed changes.

5.4.2 ACCC views

The ACCC is satisfied that the varied Migration Plan is consistent with the Migration Plan Principles in relation to the interim arrangements and minor changes, which

⁸ Telstra Submission in support, page 8.

promote service continuity for end users and the efficient and timely migration of services to the NBN.