



Optus Submission to ACCC in response to

Migration Plan Required Measures

Discussion Paper

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**PUBLIC VERSION**

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## Section 1. Overview

Optus welcomes the opportunity to provide comments on the draft Required Measures 2, 4 and 6 and whether these comply with the Migration Plan and the Migration Plan Principles. Optus has not provided comments on Required Measure 3 as it relates to the Managed Disconnection of Telstra's HFC services which will not affect Telstra's wholesale customers.

Optus shares many of the concerns raised by the ACCC in the discussion paper, in particular a number of issues highlighted in the Required Measure 6 - NBN Information Security Plan (ISP).

Optus considers that the Required Measures do not satisfy the Migration Plan Principles particularly the general principles set out in Division 7 Section 29. The general principle requires that any information Telstra receives from NBN Co cannot be used to gain an unfair commercial advantage over wholesale customers. Required Measure 2 and 6 (ISP) fail to meet this principle for the following reasons:

- The NBN Information Security Plan (ISP) attempts to only restrict information access to the Telstra Retail Business Unit whose main function is to provide sales only activities to its retail customers. Essentially the ISP places no restriction on Telstra Network Services Business Unit and allows it to match, cleanse and upload into its IT systems and processes the relevant data ahead of wholesale customers. This will enable Telstra to provide more timely and accurate commercial launch of services to its retail customers compared to other industry participants.
- The scope of the drafted ISP is too narrow and the definition of Migration Information is inadequate to provide assurance to wholesale customers that Telstra will not have early access to more detailed and accurate information. To ensure that Telstra does not gain an unfair commercial advantage, Telstra should share the information (after any matching and alignment processes with NBN) provided to it by NBN Co with its wholesale customers.
- There is no commitment from Telstra under the Migration Plan or in Required Measure 2 to provide disconnection reports to wholesale customers which includes the service address information from Telstra's systems prior to the Disconnection Date. This information is crucial in managing the disconnection process efficiently and effectively for end users ahead of their services being disconnected.

Optus submits that without adequate measures and processes to support the Migration Plan and to satisfy the Migration Principles, Telstra's wholesale customers are likely to be placed at a disadvantage to Telstra Retail in preparing for migration to the NBN.

## **Section 2. NBN Information Security Plan (Required Measure 6)**

The objective of the NBN Information Security Plan (ISP) is to set out effective and appropriate measures to support the NBN Migration Plan Principles and the Migration Plan. However, the draft ISP fails to provide such measures. The draft ISP is flawed as it fails to recognise the need to place restrictions on Telstra's business units other than the Retail Business Unit. It is also inadequate in defining the scope of NBN Migration Information; hence it gives no comfort that the NBN information received by Telstra will not be used by Telstra to gain or exploit an unfair commercial advantage.

### **2.1 Information Security Restriction on Other Telstra Business Units**

The NBN Information Security Plan provides details on how it will prevent unfair use of NBN Co Migration Information by Telstra's Retail Business Unit. However, restricting information access to the Retail Business Unit may not necessarily achieve the Migration Plan Principle of preventing Telstra from gaining an unfair commercial advantage over wholesale customers.

This is because the Retail Business Unit is not an actual identifiable business unit of Telstra but is simply a functional group that has been identified solely for the purposes of the Structural Separation Plan (SSU). Under SSU clause 8.1(c)(ii) the Retail Business Unit has extremely limited functions – “the Retail Business Unit will have principal control over and responsibility for the following in relation to the supply of Comparable Retail Services:

- sales to Retail Customers; and
- negotiating supply contracts with Retail Customers,”

There are many activities that require a product to be sold to a Customer including: idea generation and screening, development of marketing and engineering details, business analysis, technical implementation and commercialisation. These functions are largely performed by the Network Services Business Unit. Under Schedule 2 Clause 1 (a) (i) of the SSU an employee in the Network Services Business Unit can perform work which “will directly or indirectly benefit another Separated Business Unit or its customers”. Optus believes that the Telstra Operations Business Unit (ISP clause 8.1(c)(ii)) and the Network Services Business Unit are substantially the same functional group. As the Telstra Operations Business Unit is a pre-authorized group under the ISP as well as an authorised group/role for all categories of NBN Co Migration Information identified under Schedule 3 of the ISP, essentially it will have access to timely, accurate and detailed information which can be used to ensure that all system updates (particularly with respect to address matching) and product development processes are in place to enable the Retail Business Unit to sell to its Retail Customers. This opportunity is not available to Telstra's wholesale customers and as such it creates a potential competitive advantage for Telstra over its wholesale customers.

Ideally the ISP should extend the information security restriction to the Network Services Business Unit. However, Optus recognises that the restriction would limit many of the activities associated with enabling the supply of fibre services by NBN and the disconnection of fixed line carriage services in fibre rollout regions. Furthermore, this restriction would be practically difficult to enforce and monitor. Optus submits that the only practical way of ensuring that Telstra does not gain an unfair commercial advantage is for Telstra to share the information (after any matching and alignment processes with NBN) provided to it by NBN Co with its wholesale customers. Examples of the information that Telstra will obtain which may give rise to an unfair commercial advantage are listed below:

<b>Table 2 Information which is provided both from NBN Co to Telstra and Telstra to NBN Co</b> <b>Type of information</b>	<b>Circumstances when information disclosed</b>
Service address information	Telstra will provide address information to NBN Co where the address identifiers provided to Telstra do not match with Telstra’s internal records.
Technical information	Telstra may provide technical or other information to NBN Co in the course of providing all reasonable technical assistance to NBN Co when it is developing product functionality required to migrate special services.
Information which Telstra has about any Lead-in-Conduit Access Services (LICs) which are not owned by Telstra	If, after the Ready for Service Date, Telstra is aware of non-Telstra owned LICs in a Rollout Region Telstra must notify NBN Co.

### 2.1.1 Service Address Information

The subscriber address matching that occurs between NBN Co and Telstra (Schedule 3 Clause 4 Item 1.4) is a significant and ongoing piece of work which will allow Telstra to align or amend its addresses to GNAF information provided by NBN Co. Essentially NBN Co is using the Telstra address information as one of its major reference sources. This same ability to match addresses will not be afforded to other carriers as the match between Telstra and NBN Co would have been completed by the RFS date for a Rollout Region. Therefore, as a consequence of this information exchange and “address matching process”, Telstra will have a ready-made accurate database of serviceable addresses in the NBN Co footprint. Telstra is likely to argue that it will receive no competitive advantage as its Retail Business Unit would not have access to this information ahead of other carriers. Optus submits that this is clearly not the case. Although the subscribers address information (GNAF) will be available to all other carriers when a Fibre Serving Areas Modules (FSAM) is made “ready for service”, the Telstra Retail Business Unit will have an accurate, validated and “NBN-matched” address data which will serve as a platform for its sales activities. This, in itself, provides Telstra with an unfair commercial advantage over Telstra’s wholesale customers.

While Optus understands the need for NBN Co and Telstra to undergo an extensive and ongoing address matching process, the potential commercial advantage this presents to Telstra needs to be addressed. **Optus submits that Telstra should provide the validated and “NBN-matched” address data to wholesale customers 18 months prior to NBN Disconnection Date.** Given the address matching is a dynamic process; Telstra should provide the address data again at 12, 6, 5, 4, 3, 2 and 1 month/s prior to NBN Disconnection Date to capture any changes to the data.

## 2.2 The Scope of NBN Co migration information protected under the NBN ISP

Telstra attempts to take a category based approach to define the scope of the migration information. While Optus does not have a fundamental issue with this approach, Optus questions the scope of the information being excluded from the Migration information. For example, while the backhaul arrangements information is not in scope of the NBN ISP, it can be crucial information and if not handled properly could give Telstra a commercial advantage. As Telstra can work out from the backhaul information from NBN Co the next likely roll out region and target its marketing activities with more granularity than its wholesale customers. Optus also agrees with ACCC that the use of rack space may allow Telstra to use the information to

make a more granular assessment of where and when NBN Co intends to commence the supply of fibre services.

In its supporting submission Telstra has stated that the information concerning exchanges and transit network is too far removed from the connection or disconnection of specific premises. However, this information once analysed in detail could certainly assist in identifying an area that NBN Co is rolling out to ahead of NBN Co issuing a definitive roll out plan or issuing an RFS date. This will then put Telstra in the “driver’s seat” to market to potential customers in the regions targeted by NBN Roll out in the near future. There is nothing stopping Telstra marketing to all affected customers in that region, not just existing Telstra customers. The “first mover advantage” Telstra may gain could be detrimental to its wholesale customers.

Optus submits that the definition of Migration Information be expanded to include:

- Back haul arrangement;
- Reservation of exchange space;
- Dark fibre links;
- Rack spaces;
- Initial roll out plan;
- Overall rollout plan;
- Exchange access information; and
- Long term forecast of NBN Co’s infrastructure requirements provided by NBN Co to Telstra.

These are all categories of information that could be used by Telstra to its advantage.

### **2.3 Addressing ACCC Questions**

**Q1.** Does the draft NBN ISP comply with the requirements of the Migration Plan principles and Migration Plan? If not, in what way does it not comply?

The draft NBN ISP does not comply with the requirement of the Migration Plan principles and the Migration Plan. In particular, the draft Required Measure does not support Section 29 General Principle in the Determination as it gives insufficient comfort that the NBN information received by Telstra is not going to be used by Telstra Retail to gain an unfair commercial advantage over its wholesale customers. The draft ISP fails to recognise the need to place restrictions on Telstra business units other than the Telstra Retail Business Unit. It is also inadequate in defining the scope of NBN Migration Information. A more detailed answer to this is provided under section 2.1.

**Q2.** Is the scope of the information captured by the draft NBN ISP consistent with the scope of the definition of NBN migration information provided under section 29 of the Determination?

The scope of NBN migration information being protected under the NBN ISP is quite narrow. It excludes information which could provide a commercial advantage if not handled properly. Schedule 1 of the INP in particular excludes quite vital information such as the initial roll out plan and exchange access information. This information could be used to identify the areas where Telstra could best target its marketing activities ahead of the NBN roll-out.

- Q3.** What competitive harm might a wholesale customer suffer should the NBN ISP not cover the information provided by NBN Co to Telstra under the Definitive Agreements for the purposes of:
- Backhaul arrangements,
  - Reservations of exchange space,
  - Dark fibre links,
  - Rack spaces,
  - and other information provided by NBN Co for the purpose of ordering or forecasting demand for infrastructure to be used by NBN Co in supplying NBN fibre services?

In its supporting submission Telstra has stated that information concerning exchanges and the transit network is too far removed from the connection or disconnection of specific premises. However, once analysed in detail this information could assist Telstra in identifying an area that NBN Co is rolling out to ahead of NBN Co issuing a definitive roll out plan or issuing an RFS date. This would give Telstra an opportunity to get a head start in marketing to specific areas.

- Q4** Does the overarching commitment in clause 5.1(d) of the draft NBN ISP provide sufficient reassurance that the objectives of the NBN ISP can be met? If not, what further clarification or commitment is needed to ensure that this is the case?

The overarching commitment in clause 5.1 (d) attempts to ensure that Migration Information regardless of whether it has been identified and included in Schedule 1 of the ISP is only disclosed to authorised personnel and that it cannot be used to gain an unfair commercial advantage. As discussed in section 2.1 and 2.2 above without addressing the fundamental issues of the inadequate scope of the migration information and the limitations of the security measures which only applies to Telstra Retail Business Unit, the overarching commitment cannot provide sufficient assurance that the objectives of the ISP will be met.

- Q5** Do the process and measures provided under clause 9 of the draft NBN ISP comply with the requirements of the Migration Plan and the Migration Plan principles?

The principle of only allowing authorised personnel to have access to Migration information on a “need to know” basis is compliant with the Migration Principles and Migration Plan. However, how this is implemented and enforced in practice will be a very import question and one that is not answered sufficiently by the NBN ISP. There will be a number of individuals within Telstra that have access to the NBN Migration information or other information under the Definitive Agreements who are not solely working on NBN related programs. This raises the scope for conflicts of interest to arise for these individuals in the course of their various duties. Given that it will be impractical for Telstra to fully separate out its workforce engaged on NBN activities, Optus considers that sharing of information by Telstra with other service providers will be crucial in addressing this concern as detailed in section 2.1 above.

- Q6** Having regard to the need for some flexibility to facilitate the NBN rollout, could clause 9.1(c) more clearly define when Telstra personnel may use NBN Co migration information?

Clause 9.1 (c) should list the type of duties under the specific terms of the Definitive Agreements where access to migration information is required. Assuming there are clear terms in the Definitive Agreements as to the range of specific activities needed to be undertaken by relevant personnel in relation to migration, and the nature of migration activities can be quite generic, Optus considers that a list of relevant duties where migration information is required can be

exhaustively identified. There should also be a review clause and process built into the list of the defined activities so that the duties can be reviewed and updated periodically. This will ensure transparency of migration activities and Telstra's access to migration information. The review process would thus provide the flexibility required to facilitate NBN rollout.

Clause 9.1 gives Telstra a range of rights and opportunities to grant access to NBN migration information to its personnel. While Telstra may need access to migration information in order to meet its legal and regulatory obligation and these rights should not be unnecessarily limited, there is a clear need for more transparency as to who in Telstra access to the migration information has been granted and the reasons for such access. Telstra should publish periodic reports on this information to the ACCC. This reporting requirement will serve as a deterrent for Telstra unnecessarily breaching the information security.

<b>Q7</b>	Is the exception for 'lead-in-Conduit Access Service' information consistent with the requirements of the Migration Plan and Migration Plan principles?
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The NBN ISP has given personnel in the Telstra Retail Business Unit a right to access and use Migration Information where the information provided by NBN Co under Service Module 2 (LIC Access Services). While Telstra has listed the circumstances under which this information is not to be used, there is no clear enforcement and reporting requirement documented in the ISP. There are no clear measures to prevent misuse of the information for non-approved purpose.

<b>Q8</b>	Is the level of detail on the information handling arrangements for non-systems based NBN Co migration information consistent with the requirements of the Migration Plan principles and Migration Plan?
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The ISP adequately outlines the access control of Telstra's information systems by its personnel. Clause 9, schedule 2 and schedule 3 clearly details the process for obtaining access to migration information. However, there is no adequate provision for how information security is achieved for migration information which is not in the Telstra's information system. Clause 9.1 (b) states that "*Telstra acknowledges that, from time to time, NBN Co Migration Information may also be used or disclosed other than through an information system to which the User Access Control Requirements apply (for example, where NBN Co provides to Telstra an electronic or physical copy of a record)*". Where this occurs, Telstra will ensure that the NBN Co Migration Information is not used by or disclosed to any person, other than to Authorised Personnel and on a 'need to know' basis. There is however no processes in respect of:

- How the relevant personnel is physically granted access to the information;
- What parameters are used to assess the need for the grant of the information;
- Where the list of the authorised personnel is kept; and
- How the information is kept so that there is no unauthorised access to this information at any time.

Optus notes that issues have already arisen in relation to Telstra's Structural Separation Undertaking about the robustness of information access controls.

### Section 3. Required Measures 2 and 3

**Q9** Do the new processes developed to facilitate managed disconnection comply with the requirements of the Migration Plan and the Migration Plan principles?

Optus has a material concern with Required Measure 2 because the current drafting only considers the processes that Telstra will follow from the Disconnection Date onwards. Optus understands that there needs to be an efficient Managed Disconnection process across all suppliers to encourage end users to migrate from the legacy copper network to NBN prior to the Disconnection Date and to ensure that any remaining copper services are cancelled from the Disconnection Date onwards. However the most important parts of any Managed Disconnection process will occur in the lead-up to the Disconnection Date. It is vital, therefore, that there are documented commitments from Telstra to provide sufficient advance notification and detail to wholesale customers on any services that are due for cancellation under this process. Without this there is a risk that some end users of wholesale customers may receive very little notice of a pending disconnection or may be disconnected in error under the Managed Disconnection process. There is also a risk that Telstra Retail will have earlier and more accurate access to Managed Disconnection data than wholesale customers.

General Principle 21 of the Migration Plan Principles provides that there must be equivalent treatment between wholesale customers and retail business units in the implementation of the processes for disconnecting carriage services from a separating network. When an NBN Rollout Region is declared as Ready For Service, the countdown to the Disconnection Date begins and all suppliers will be taking steps to notify their end users who have existing copper services that they must migrate to an alternate service before the disconnection date. As Telstra has responsibility for managing the disconnection of both retail and wholesale services in each Rollout Region based on its copper address records, it is essential for service equivalence that all wholesale customers of Telstra have an equal ability to accurately identify each of the affected services based on the current Telstra copper address. Telstra Retail Business Unit will have ready access to this information in the lead up period prior to the Disconnection Date. Required Measure 2 should be amended to include reporting obligations prior to the Disconnection Date and there should be clearly stated commitments to provide Disconnection Reports to wholesale customers included within the Telstra Migration Plan.

Optus suggests that this Required Measure should be amended so that Telstra will provide wholesale customers with:

- An Initial Disconnection Report;
- A Draft Final Disconnection Report; and
- A Final Disconnection Report.

These reports should include the service number, the service address from Telstra's records and the FSAM ID for each address. This would allow wholesale customers to quickly match this data with their own records and information from NBN Co.

The Initial Disconnection Report is a list of all ordinary copper services that Telstra is providing to the wholesale customer in a Fibre Footprint. This report should be provided to wholesale customers 10 working days after the implementation of the copper cease sale date for the Fibre Footprint. Optus believes that this list will be an important tool for wholesale customers (as well as Telstra) as it will initially identify the volume of services that are due to be cancelled under the Managed Disconnection process.

Without the provision of such a report there is the potential for wholesale customers and Telstra to have different views on which particular copper service is pending disconnection. Optus understands that such a report will only be an initial draft as NBN Co may add and remove some addresses from a Fibre Footprint during the Disconnection Window. However an Initial Disconnection List will still provide an important reference for verification and a starting point for the long-term notification of Managed Disconnection.

Additionally Optus suggests that a Draft Final Disconnection Report should be prepared and provided to wholesale customers 10 business days before the Disconnection Date. Optus requires this advance notification so it will have an equal opportunity to arrange for the implementation of Soft Dial Tone on ULL based Standard Telephone Services from the Disconnection Date. The advance notification will also allow for a further verification of the data and will allow wholesale customers an opportunity to provide a final warning to end customers that Managed Disconnection is due to occur.

Optus also submits that Telstra should continue to provide a Final Disconnection Report as has been specified in the draft Required Measure, however there should be an additional commitment to provide this notice within one business day of the Disconnection Date.

Unless there is a clear obligation on Telstra to provide the current service address information from its records to wholesale customers in these Disconnection Reports, there is a potential for non-equivalent treatment between wholesale customers and Telstra during the Managed Disconnection Process. Including this obligation in Required Measure 2 will ensure that all wholesale customers are provided with an equal opportunity to identify services, notify end users and migrate services to NBN well in advance of the Disconnection Date.

## Section 4. Required Measure 4

**Q10** Do the new process developed to facilitate the building of copper paths to supply special services and special service inputs comply with the requirements of the Migration Plan and the Migration Plan principles?

Clause 21.2(a) of the Migration Plan states “that where Telstra receives an order for the supply of a new Direct Special Service or Special Service Input during the SS Supply Period for the applicable SS Class, in respect of a Premises that has been permanently disconnected, Telstra will use all reasonable endeavours to build a Copper Path at the Premises in order to enable the supply of the ordered Direct Special Service or Special Service Input.”

Optus submits that this commitment should be reflected in Required Measure 4 (RM 4) and applied equally to Telstra retail customers and Telstra wholesale customers. Required Measure 4 does not give this commitment but simply states that the “business as usual maintenance programme” is not within the scope of RM 4. Therefore, a positive obligation to maintain or build a copper path for the purposes of supplying a new Direct Special Service or Special Service Input during the SS Supply Period for the applicable SS Class should be made and applied equally to Telstra retail and wholesale customers alike. This obligation is in the best interest of the end user seeking supply of the special service.