



Submission in response to ACCC
Discussion Paper

**Proposed NBN Co Carrier Licence
Condition about Information Disclosure**

PUBLIC VERSION

April 2015

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Section 1. Executive Summary

- 1.1 The roll-out of the NBN and the migration of customers from legacy networks to the NBN is a complex process that will involve multiple parties in multiple processes over an extended number of years. The disclosure of relevant and timely information from NBN Co on its roll-out will be critical to ensuring RSPs are able to transition their existing customers and service requirements into an NBN environment.
- 1.2 Optus supports the development of a Carrier Licence Condition for NBN Co in respect of its information disclosure arrangements. A properly constructed Licence Condition is likely to facilitate both an improvement in end-customer's experience in transitioning to the NBN and ensure that there is equivalence of information between all RSPs. In particular, the Licence Condition should ensure that Telstra does not gain any competitive advantage by virtue of its expanded role in the roll-out of the multi-technology mix NBN.
- 1.3 Under the current Fibre to the Premise model there is already significant interaction and information flows from NBN Co to Telstra and other RSPs in respect of the roll-out of the NBN and the customer migration and disconnection arrangements. However, the existing processes have been subject to ongoing development and change to address some material operational risks, including the risk of customers being disconnected without being able to connect to the NBN. These issues have heightened the importance of all RSPs gaining timely access to relevant information from NBN in an equivalent manner.
- 1.4 The shift to a multi-technology mix (MTM) NBN will likely increase the complexity of the roll-out and migration arrangements; it will also increase the risks of information asymmetry since NBN Co's need to access more Telstra infrastructure will deepen the interaction between NBN Co and Telstra in the roll-out of the NBN. This will increase the importance of the Licence Condition to both facilitate a seamless transition to the NBN across the different technologies and to ensure that RSPs are not disadvantaged against Telstra in respect of the information it will gain by virtue of its role in the MTM deployment.
- 1.5 In this submission Optus makes the following key points in respect of the ACCC's consideration of the Licence Condition:
 - (a) Whilst an important objective of the Licence Condition should be to ensure equivalence in access to information between RSPs, the primary objective of the Licence Condition and information disclosure should be to facilitate the seamless transition of all end-users to the NBN and to support the efficient connection and transfer of NBN Services by all RSPs.
 - (b) In determining information to be disclosed, NBN Co should consult with and take account of RSPs views in terms of: the detail of information disclosed; the timeliness of disclosure; and the format of disclosure.
 - (c) Information should be disclosed to all RSPs. To the extent that any information is restricted to Telstra, this fact should be disclosed together with details of the type of information provided to Telstra so that RSPs can determine whether such restricted disclosure is reasonable.
 - (d) The success of the Licence Condition will dependent upon the effectiveness of internal compliance and reporting measures that are implemented in connection with the obligations. The Licence Condition should set out details of the type of

internal and external checks and balances on information disclosure obligations that NBN Co should implement. It should also specify reporting obligations in connection with NBN Co's compliance with the Licence Condition.

- (e) To facilitate improved interaction with customers in the migration/disconnection process and to address a current breach of equivalence, NBN Co should disclose the "in-train orders report" to all RSPs (not just Telstra).
- (f) NBN Co should disclose information on the copper line, including FNN/ULL ID, active, recently made inactive and line quality at a location, to neutralise the risk that Telstra (which has access to historical records of its network) does not gain a competitive advantage. Access to this information is particularly important in order to support the efficient transfer or connection of FTTB/FTTN services that will utilise existing copper pairs to migrate or connect an NBN service.
- (g) Under the terms of the Definitive Agreement Telstra provides NBN Co information on its network. It is not clear that this information is subsequently disclosed to RSPs. This creates a potential information asymmetry that may give Telstra a commercial advantage in the transition to the NBN. Optus recommends that NBN Co should be required to publish a summary table outlining all information it receives from Telstra. Making this information available will provide greater transparency on the information flows between Telstra to NBN Co. This will allow a RSP to determine whether the lack of access to that information will put it at a competitive disadvantage to Telstra and whether Telstra is potentially in breach of its own information equivalence obligations.

Section 2. Proposed Licence Condition

- 2.1 Optus supports the development of the Licence Condition in respect of the information disclosed by NBN Co in connection with its roll-out. This section sets out Optus' views on:
- (a) The objective of the proposed Licence Condition;
 - (b) The guiding principles for the Licence Condition; and
 - (c) The cost and benefits of the Licence Condition.

Objective of the proposed Licence Condition

- 2.2 The change in NBN policy resulting in the shift to the multi-technology mix (MTM) approach as the preferred NBN deployment model will mean that Telstra will now have an increased role to play in the NBN rollout. This will inevitably lead to a more expansive working relationship between NBN Co and Telstra, with the likely result that Telstra may either be privy to NBN-related information that is either more comprehensive in scope and/or in a timelier manner than that afforded to other RSPs.
- 2.3 In recognition of this closer working relationship, the Department of Communications has indicated that the over-arching objective of the Licence Condition is to ensure symmetry between Telstra and all other RSPs in respect of NBN roll-out information.
- 2.4 Optus considers this to be an important objective, since any asymmetry in information flows from NBN Co to Telstra and other RSPs can create competitive distortions. However, Optus considers that the objective of the Licence Condition should be broader. Ultimately, the information disclosure should seek to facilitate the seamless transition of all end-users to the NBN.
- 2.5 Access to information should not be an end in itself. Rather it should be a means to an end. The end goal must be customer migration to the NBN. The basis for disclosure of information (to any RSP) should be what is required to assist in the end-user migration process not only for planning/forecasting; but also to ensure that the actual migration occurs seamlessly. Once that is clear then a related objective is to ensure there is disclosure on competitively neutrals basis to all RSPs.
- 2.6 An issue that will need to be considered in respect of this objective is that there are multiple parties involved in the migration process. Information that might be vital to achieving seamless migration might be within NBN Co's control, especially under a MTM NBN.
- 2.7 A further objective of the Licence Condition should be to improve the information disclosure arrangements between NBN Co, Telstra and all other RSPs in relation to NBN-rollout and other related information. This may require some careful consideration of the precise scope of the obligations in the Licence Condition to make sure that it captures information that is critical to the migration process, but may not be within NBN Co's discretion to disclose.

Guiding Principles

- 2.8 The ACCC has proposed a number of Guiding Principles that could be included in the Licence Condition in the discussion paper. These are largely intended to ensure information equivalence between NBN Co and all RSPs (not just Telstra), and include:¹
- (a) Any information about the NBN rollout that NBN Co makes available to one service provider should be made available to all service providers;
 - (b) Telstra will not obtain a competitive advantage by reason of its receipt of information from NBN Co;
 - (c) All relevant parties are to receive information from NBN Co about the NBN to place them in an equivalent position to plan for, and commence supplying, equivalent services over the NBN fixed line network generally, and in individual NBN services areas that comprise a part of the NBN fixed line network;
 - (d) Information disclosed should be in an appropriate format so that it is readily able to be interpreted by each relevant person; and
 - (e) There should be no unnecessary restrictions on each person gaining access to the information.
- 2.9 Optus is broadly supportive of the principles approach to be applied to the Licence Condition. Optus also proposes two additional principles for consideration by the ACCC:
- (a) That the systems, processes and format for disclosing information should not impose undue cost burdens on RSPs.
 - (b) That NBN Co should consult and take reasonable account of the views of RSPs in terms of; the detail of information disclosed; the timeliness of disclosure; and the format of disclosure.
- 2.10 In addition, NBN Co should also be required to publish a summary table outlining all information it receives from Telstra, regardless of whether it is to be disclosed under this Licence Condition to RSPs or not. Making this information available will ensure greater transparency on the information flows provided between Telstra to NBN Co. This will help RSPs to identify whether there is information available to Telstra and NBN Co that would be useful to them in accessing the NBN.
- 2.11 Optus therefore considers that the Licence Condition adopt a principles approach. As a general rule, NBN Co should be required to provide information to all RSPs (including Telstra) on a contemporaneous basis. The appropriate format would also be determined in consultation with RSPs, and should allow for flexibility in the manner and form in which the relevant information should be disclosed.

Costs and benefits of the licence condition

- 2.12 It is difficult to be precise about the likely costs and benefits of the proposed Licence Condition in the absence of a draft version of the condition.

¹ ACCC, 2015, Input into a proposed NBN Co carrier licence condition about information disclosure, Discussion Paper, March, p.13

- 2.13 In general terms, Optus anticipates that costs will be imposed on NBN Co to meet its obligations under any Licence Condition. This will include upfront costs to develop reporting tools and systems as well as ongoing costs associated with reporting and compliance obligations. These costs, however, are likely to be small in the overall costs of the NBN project and will be outweighed by the considerable benefits the disclosure obligations will have in terms of:
- (a) Ensuring there is equivalence of outcomes for RSPs in the dealings with NBN Co; and
 - (b) Facilitating efficient end-user transition to the NBN.
- 2.14 Experience to date has indicated the importance of RSPs having access to clear, timely and relevant information to facilitate the seamless migration of customers to the NBN. Problems can and have arisen where information flow is uncertain and/or asymmetric. This information asymmetry also applies to information that is shared between Telstra and NBN Co. For example, it is clear even within the list of information flows set out as Schedule 1 of the discussion paper that NBN Co and Telstra will be required to engage in a series of exchanges on enquiries and responses in relation to data on a number of matters.
- 2.15 Optus is therefore concerned that unless the Licence Condition also includes a guiding principle for the disclosure of the type of information that Telstra provides to NBN Co, then there remains the risk that Telstra might be placed in a position of competitive advantage.

Section 3. Information Disclosure Requirements

- 3.1 As discussed in the previous section, the development of the Licence Condition should focus on achieving its objective of facilitating greater information symmetry and flow of information between NBN Co and RSPs. This objective is particularly crucial during this period of transition to NBN and in light of the changes associated with the greater mix of access technologies that will be made available in the NBN deployment.
- 3.2 Ultimately, the information disclosure should seek to facilitate the seamless transition of all end-users to the NBN. It should also capture information that is critical to the migration and disconnection process, but may not otherwise be within NBN Co's discretion to disclose.
- 3.3 The remainder of this section sets out Optus' views on a number of issues that should be considered during the development of the Licence Condition.

Information to be disclosed

- 3.4 The ACCC notes there are already a number of existing arrangements that deal with the disclosure and use of sensitive information – arising from different instruments with different regulatory obligations. In general, these arrangements seek to achieve the objective of ensuring that non-discrimination and equivalence obligations can be met.
- 3.5 Telstra is subject to regulatory obligations governing the use of information it collects from wholesale customers in its Structural Separation Undertaking (SSU); as well as NBN Co in its Migration Plan (MP).
 - (a) Clause 14 in the SSU sets out Telstra's Information Equivalence obligations. It establishes; the equivalence measures for the quality and timeliness of information provided in respect of network activities; circumstances or events that are likely to affect the delivery or operational quality of Regulated Services; to ensure there is equivalence in the quality and timeliness of information provided by Telstra between its Retail Business Units and RSPs in respect of specified declared services.²
 - (b) Clause 24 in the MP sets out Telstra's Information Security obligations. It establishes the information security measures in relation to the use and disclosure of NBN Co Migration Information, which will subsequently also be in accordance with the NBN Information Security Plan when established.³
- 3.6 NBN Co and Telstra are also subject to contractual obligations regarding the use of and disclosure of confidential information under the Definitive Agreements (DA). The ACCC considers that the DAs *"are not of themselves an adequate means to promote broader competitive outcomes."*⁴ Schedule 1 to this discussion paper sets out a list of 22 information flow references that NBN Co provides to Telstra under its DA obligations. The corollary to this is set out in the Telstra MP at Schedule 8, in which it has also been noted that the list would be updated *"once the information arrangements between Telstra and NBN Co are more fully developed and then from time to time."*⁵

² Telstra, Structural Separation Undertaking, Including variations up to 19 June 2013, Clause 14

³ Telstra, Migration Plan, Incorporating amendments to 15 October 2014, Clause 24

⁴ ACCC, 2015, Input into a proposed NBN Co carrier licence condition about information disclosure, Discussion Paper, March, p.6

⁵ Telstra, Migration Plan, Incorporating amendments to 15 October 2014, Schedule 8

- 3.7 Optus considers that, at the very minimum, RSPs should be able to request access to each of the listed information flow references. This would similarly be in line with the Explanatory note to Clause 24 on Information Security in the MP which states that:

Telstra anticipates that most, if not all, of the information which NBN Co provides to Telstra under the Definitive Agreements will be published by NBN Co to the rest of the industry at the same time.⁶

- 3.8 In addition, NBN Co should also be required to publish a summary table outlining all information it receives from Telstra, regardless of whether it is to be disclosed under this Licence Condition to RSPs or not. Making this information available will ensure greater transparency on the information flows provided between Telstra to NBN Co. This will allow RSPs to determine whether the lack of access to that information will put it at a competitive disadvantage to Telstra.
- 3.9 It follows that the Licence Condition on NBN Co should be to ensure that all NBN Co Migration Information made available upon request. Even in particular circumstances where information cannot be disclosed, the response to the request should include a reason outlining why this may be the case.

Manner and form of disclosure

- 3.10 Optus agrees with the ACCC's views that information disclosed by NBN Co is made publicly available (subject to any confidentiality restrictions). The manner and form of this disclosure will inevitably vary with the type of information being disclosed. That said the format of disclosure should not be left to NBN Co to decide, rather it should be subject to a guiding principle that any information disclosed should be in an appropriate format so that it is readily able to be interpreted by relevant parties. The appropriate format should also be determined in consultation with RSPs, and should allow for flexibility in the form in which the relevant information should be disclosed.
- 3.11 Where information is already being publicly disclosed to all parties (RSP or otherwise), this should continue to be provided. The Licence Condition should apply to all NBN-related information that NBN Co provides to Telstra.

Level of detail and Information to be disclosed

- 3.12 Optus agrees with the ACCC's comments that relevant information for disclosure would include information where it is likely to have a material bearing on RSP's planning operations over the NBN. As such, the type (and importance) of information required by RSPs is likely to dictate the level of detail, format and frequency of the disclosure. These issues are ultimately linked – and a trade-off may exist between timing and format of information disclosed.
- 3.13 The Licence Condition should set out a guiding principle to ensure information equivalence across all relevant parties is achieved and to facilitate seamless customer transition to the NBN. In particular, RSPs should be granted equal opportunity to receive information from NBN Co in a timely and appropriate format – thereby placing them in an equivalent position to plan for, and commence supplying, equivalent services over the NBN.
- 3.14 The appropriate format should also be determined in consultation with RSPs, and should allow for flexibility in the form in which the relevant information should be disclosed. This may vary in terms of the type of information being disclosed.

⁶ Telstra, Migration Plan, Incorporating amendments to 15 October 2014, Clause 24

- 3.15 The ACCC has sought comments on a number of specific operational-related issues discussed below. In some cases, a more detailed discussion is also provided in Section 4.

Construction and other ready for service information

- 3.16 NBN Co currently provides a number of reports in relation to construction and ready for service (RFS) information. A number of these reports are made publicly available through the NBN Co website. Optus considers that these reports should continue to be provided irrespective of the Licence Condition outcome.
- 3.17 Examples of publicly available information provided by NBN Co include:
- (a) NBN Rollout progress report – NBN Co publishes a network rollout progress report outlining the number of premises passed; the services activated and those currently unable to connect (service class 0). This information is updated on a weekly basis.
 - (b) Construction rollout plans – In December 2014, NBN Co announced a new national rollout plan, which was the first to incorporate the MTM approach.⁷ This provided an indicative view of scheduled construction work up to June 2016. The information in the Construction plan update has been categorised by: Location (State, Region); Parts of suburbs and towns covered; Estimated total number of premises covered; and Estimated total number of suburbs and towns. This 18-month update is provided on a quarterly basis, with the latest release dated 1 April 2015.⁸
 - (c) Community rollout plans – NBN Co publishes a list of communities where NBN services are available and suburbs where build has commenced.⁹ The information provided in this Communities Rollout update has been categorised by: Location (State, Suburb, Postcode); Status (Service Available, Build Preparation, Build Commenced); Service Type (Greenfield Fibre, Brownfield Fibre, Wireless, Other); and NBN ID. This information is updated on a weekly basis.
- 3.18 Under current arrangements, a RSP is also able to access some additional network/rollout reports from the NBN Portal. For example, the Historical Footprint List (HFL) provides RSPs more detailed information such as location IDs, available access technologies and serviceability status for existing premises.

Technology choice information

- 3.19 Given Telstra's increased involvement with the planning and design process for the MTM NBN, Telstra will receive early notification of the likely technology mix for a given rollout region. Optus considers that this is the type of information that would provide Telstra with a competitive advantage over other RSPs.
- 3.20 To date, NBN Co currently provides publicly available information on the indicative MTM rollout plan with scheduled construction work up to September 2016.¹⁰ The current information provided in this MTM rollout plan has been categorised by: Location (State, Region/suburb/town); Estimated total number of premises; and Proposed Technology (MTM, Wireless; and FTTP). This information is intended to be updated on a quarterly basis.

⁷ NBN Co, "NBN Co rolls out new national construction plan," Media Release, 1 December 2014

⁸ NBN Co, "NBN Co updates national construction plan," Media Release, 1 April 2015

⁹ NBN Co, Communities in the rollout, 17 April 2015

¹⁰ NBN Co, MTM Rollout Plan, 1 April 2015

- 3.21 Optus considers that information on the technology mix in rollout regions is important for RSPs because any changes can have material impacts on RSP planning and design activities. Therefore early notice of plans (and in particular, earlier notice of any changes to initial information disclosure reports) would be beneficial for all RSPs.

Service-related information

- 3.22 Service-related information, such as knowing the status of NBN orders, should be disclosed to RSPs. Under current arrangements, the incumbent RSP would only learn of a churn after the activation of the NBN service. Concerns in relation to this lack of disclosure are already being realised through the current disconnection process, thereby highlighting the need for improvement in the associated information flows.
- 3.23 For example, Optus currently experiences information asymmetry on the level of detail received regarding in-train orders. Under current provisioning arrangements, RSPs are required to advise their end-customers that their existing service will be Disconnected if they do not migrate to the NBN before the define Copper Disconnection Date. This is in addition to the notifications end-customers already receive from the TUSMA and NBN Co.
- 3.24 This means that if RSPs cannot see in-train NBN orders or recently completed NBN orders placed with other NBN RSPs, then the RSP will not be able to properly manage communications to customers about the upcoming Disconnection Date. Access to this information is particularly important for RSPs to allow for the seamless transition of customers to the NBN (i.e. it would allow RSPs to more effectively focus on its existing customer base who have not yet placed an NBN order). This is currently a concern experienced by all non-Telstra RSPs. In contrast, Telstra currently receives an in-train orders report from NBN Co at Disconnection Date (see DA Information Flow no.12) but this is not shared with other NBN RSPs. This therefore provides a competitive advantage to Telstra.
- 3.25 Optus considers that this issue needs to be addressed, and that the same in-train orders report should be made available on an equivalent basis to all RSPs. In addition, there should be tool provided to allow RSPs to look up an NBN location ID and establish whether there is already an in-train or completed NBN order at that address.
- 3.26 Optus notes that the ACCC has also considered this issue from another perspective in the context of limiting the information flow altogether. The main example provided relates to whether there should be restrictions on NBN Co supplying commercially sensitive information of its customers to a losing network service provider.
- 3.27 Given that Telstra already holds the bulk of this information flow, Optus considers that this information does not need to be limited *but* should be provided to all RSPs to allow for rectification of incorrect churn activities (i.e. churn reversal) and associated disconnection activities.

Forecast and actual line quality

- 3.28 Access to information at individual premises is required to allow RSPs equal opportunity to win the customer at that address. Under current arrangements, Optus is only able to access information at individual premises through a service qualification query made by a RSP at the point of sale (i.e. when an NBN order request is made).
- 3.29 Telstra's access to detailed design information in conjunction with the existing information it holds for individual premises will provide Telstra with an advantage in the forecasting of

potential NBN line quality in particular locations. This level of information is not currently available to other RSPs. This information should be made available.

Points of Interconnect related information

- 3.30 Points of Interconnect (POI) related information obligation should be expanded to include additional information on co-location space availability and queuing information. Under current arrangements, NBN Co has only been required to provide POI-related information in accordance with the NBN Co Special Access Undertaking (SAU) – as such, is confined to notification requirements surrounding both the number and location of POIs.

Recipients of information

- 3.31 Optus does not see the need for specific restrictions to be placed on who can access information.
- 3.32 Where information is disclosed broadly to access seekers and/or RSPs there is no need for specific restrictions to be placed on the use of that information. That said, where information is disclosed only to Telstra, Optus considers that this information should be subject to a permitted use obligations. That is, the information should be disclosed on the basis that it is only used for specified purposes. This could be achieved by an enforceable agreement or undertaking that would help ensure that Telstra receives no commercial advantage by virtue of gaining sole access to that information.
- 3.33 However, NBN Co should disclose the type of information (in summary format) that is subject to such obligations so that RSPs can determine whether such restricted disclosure is reasonable.

Timeliness of disclosure

- 3.34 Timing of disclosure will depend upon the specific information to be disclosed. However, Optus considers that timing of disclosure should be subject to a guiding principle that information be disclosed is accurate and timely. This would also be determined in consultation with RSPs, and should allow for flexibility in the form in which the relevant information should be disclosed.
- 3.35 Access to information which has a material bearing on RSP's planning operations over the NBN is crucial for RSPs to receive in a timely manner. This is imperative for a number of RSP planning and marketing activities, including customer communications.
- 3.36 As a general rule, NBN Co should be required to provide information to all RSPs (including Telstra) on a contemporaneous basis. In the event of any information asymmetry, NBN Co should also be required to provide a justification for this delay.

Compliance monitoring and enforcement

- 3.37 Optus agrees with the ACCC's assessment that the success of the Licence Condition will likely be tied to the effectiveness of internal compliance and reporting measures that are implemented in connection with the obligations. Such measures will be critical in providing industry with confidence that the obligations are being met and to enable redress should any problems with compliance arise.
- 3.38 Optus considers that the Licence Condition should set out details of the type of internal and external checks and balances on information disclosure obligations that NBN Co should

implement. It should also specify reporting obligations in connection with NBN Co's compliance with the Licence Condition. This should include:

- (a) Periodic reporting (for example quarterly) in summary form the type of information NBN Co has disclosed in the period and who that information has been disclosed to. In the case of information disclosed to Telstra only, an explanation should be provided as to why such information is not made available more generally and details of any specific obligations placed on Telstra in respect of that information. Such arrangements will help RSPs determine whether there is sufficient equivalence of disclosure of information between them and Telstra.
- (b) A periodic certification statement of NBN Co's compliance with the obligations set out in the Licence Condition.
- (c) In the event that NBN Co identifies a potential breach of the Licence Condition obligations, NBN Co should identify the breach and provide details of why it has arisen and the details of any plans to rectify the breach and/or ensure that it is not repeated.

Existing information gaps to be addressed

- 3.39 As highlighted above, the information disclosure should address existing information gaps and seek to facilitate the seamless transition of all end-users to the NBN. It should also capture information that is critical to the migration and disconnection process, but may not otherwise be within NBN Co's discretion to disclose.
- 3.40 Experience to date has highlighted a number of information gaps in the disclosure of NBN information between NBN Co and RSPs. This is of particular concern where Telstra is a known recipient or holder of such information. For example, Optus has concerns with the limitations currently surrounding the ability to access information on the following:
 - (a) Access to all in-train NBN Orders for a rollout region is only provided to Telstra who then provide a subset to its wholesale customers;
 - (b) Access to information at individual premises is not comprehensive;
 - (c) Access to line speed information in a Rollout Region.
- 3.41 The lack of access and limitations to NBN information currently provides Telstra with a competitive advantage over other RSPs. As a result, this has impeded on the ability of RSPs to plan and provision for the seamless transition of its end-users to the NBN. The Licence Condition should take into account these concerns. Optus discusses this below.

Access to information on In-train NBN Orders

- 3.42 Optus currently does not receive information on the status of In-train NBN Orders or recently completed NBN orders placed with other RSPs (i.e. Optus only receives confirmation of In-train NBN Orders that it has placed for that rollout region). In direct contrast, Telstra receives at least two In-train NBN Order report at Disconnection Date and DD+25 business days from NBN Co. This same report should be made available to all RSPs at the same time it is provided to Telstra.
- 3.43 Access to this information is crucial for RSPs to ensure customers can have a seamless transition to NBN. The status of in-train orders is particularly important, as it will provide

RSPs with the ability to more effectively focus on its existing customer base who have not yet placed an NBN order before the Copper Disconnection Date.

Access to information at individual premises

- 3.44 Comprehensive information regarding individual premises and the NBN Products available is required to support migration and connection to the NBN and for the development of accurate and efficient end-user communications. Currently, a RSP can access information which includes data on access type; possible line speeds; and if there is a FNN or ULL ID on the copper at an address level. To the extent available, this information is accessed through a service qualification query for a single/specific address made by a RSP at the point of sale (i.e. when a NBN Order request is made).
- 3.45 Optus considers that the information made available should be expanded. For example,
- (a) Where there is an active service, NBN Co should disclose information on the FNN or the ULL ID (whichever is relevant) at that premise. This identifier can be used in a NBN order to ensure that the NBN service is correctly provisioned to an existing copper pair and socket.
 - (b) Where there is an inactive service, NBN Co should disclose the sequence of the most recently disconnected copper service at that premise. This identifier can be used to allow RSPs to use existing infrastructure to support the seamless transition to NBN (for example, if there is more than one line connected at the premise, this would provide information on the most recently used line allowing RSPs to make better informed decisions on the provisioning process, thereby supporting a more seamless transition to NBN).
- 3.46 This level of information is not currently available to non-Telstra RSPs, but should be made available by NBN Co as Telstra can readily access this information.
- 3.47 The introduction of the FTTB/FTTN product under the MTM increases the need for RSPs to have ready access to more comprehensive information on the existing copper pair information at a location in order to support the efficient transfer or connection of FTTB/FTTN services that will utilise existing copper pairs to migrate or connect an NBN service.

Access to information in a Rollout Region

- 3.48 In addition to the information at individual premises, access to NBN information should be provided on a more holistic level in a Rollout Region (particularly across its existing customer base) as this will provide RSPs with better information in order to engage in efficient communications with its end-users.
- 3.49 For example, RSPs should be able to request information from NBN on the possible line speeds for all locations within a Rollout Region. At a minimum, RSPs should be able to request this for all of its existing customers. This is particularly important for proactive engagement in the lead up to NBN migration as it will enable RSPs to more fully inform its customers of what products they can acquire.

Section 4. Optus' response to specific questions

- 4.1 Optus submits that as a general principle, all RSPs should be able to receive the same information as that provided from NBN Co to Telstra as agreed under the DAs. Information that is restricted to Telstra only should be identified so that RSPs can determine whether such restricted disclosure is reasonable.
- 4.2 The Licence Condition should set out the Guiding Principles for this information disclosure requirement. In addition, NBN Co should be required to provide information to all RSPs (including Telstra) on a contemporaneous basis. The appropriate format would also be determined in consultation with RSPs, and should allow for flexibility in the manner and form in which the relevant information should be disclosed.
- 4.3 The remainder of this section sets out Optus' views on the 22 information flow references that NBN Co provides to Telstra under its DA obligations highlighted in Schedule 1 of the discussion paper. Optus also provides specific responses to a number of the ACCC questions.

Objective of the proposed licence conditions

Q2 – Do you agree with the overarching objective of the proposed licence condition?

Q3 – Do you see any limitations or obstacles to achieving this objective via the proposed licence condition, and if so, how should they be addressed?

- 4.4 As set out in Section 2, Optus agrees with the overarching objective of the proposed Licence Condition.
- 4.5 However, there are other limitations that still provide Telstra with a competitive advantage. This can be demonstrated by the fact that Telstra is already privy to historical information on all existing fixed line customers/premises.
- 4.6 For example, Telstra will already have access to customer ULL IDs and FNNs, both of which are required in order to process a VDSL order with NBN Co. This inherently provides Telstra with a competitive advantage over the other RSPs – who are required to have additional processes to source these codes. Securing these codes will come at an additional cost to RSPs, require longer process/lead times, and create further adverse impacts to RSPs where these processes don't work.

Guiding principles for the proposed licence condition

Q4 – What are appropriate underlying principles for the licence condition?

Q5 – Should the licence condition incorporate principles for dealing with information flows?

- 4.7 As set out in Section 2, Optus agrees with the principles approach for the proposed Licence Condition.
- 4.8 Optus broadly supports the set of Guiding Principles in the discussion paper. Optus also proposes two additional principles for consideration by the ACCC:
- (a) That the systems, processes and format for disclosing information should not impose undue cost burdens on RSPs; and

- (b) That NBN Co should consult and take reasonable account of the views of RSPs in terms of; the detail of information disclosed; the timeliness of disclosure; and the format of disclosure.

4.9 As a general rule, NBN Co should be required to provide information to all RSPs (including Telstra) on a contemporaneous basis. The appropriate format would also be determined in consultation with RSPs, and should allow for flexibility in the manner and form in which the relevant information should be disclosed.

Information to be disclosed

Q6 – What information about the NBN rollout do service providers require? What is the rationale for making this information available?

Q7 – What information should NBN Co disclose to all service providers regarding the NBN rollout? What is the rationale for making this information available?

Q8 – In what circumstances or for which of the identified datasets would it be necessary or appropriate for NBN Co to disclose verbatim information in order to achieve information symmetry?

Q9 – For each identified dataset, what management or operational reports should NBN Co make available to achieve information symmetry?

Q10 – What lead time is necessary for being informed of the technology mix for a region? What are the relative merits of receiving early notice of plans that may be subject to change and of receiving finalised design documents at a later stage?

Q11 – What information should NBN Co make available regarding individual premises? What is the rationale for making this information available?

Q12 – Would retail service providers benefit from knowing which of its customers have lodged an NBN migration order?

4.10 As set out in Section 3, Optus considers that all the NBN-related information currently being provided to Telstra should be available to RSPs on an equivalent basis. This includes access to the information in the same timeframes, in order to use for our Network planning and Business modelling, and so as to not be at a competitive disadvantage to Telstra.

4.11 Optus considers that NBN Co should disclose each of the identified data sets (i.e. the 22 Information flows under the DAs), in the same timeframe as provided to Telstra. Optus notes that this information is necessary for purposes of our **[CiC]** activities.

4.12 **[CiC]**

4.13 Information on the technology mix for a region is required in order to develop long and short term forecasts; and to support business resource planning (sales, operations, field services). Any technology mix changes can impact the forecast market take-up, as such can have material impacts to our full year operational planning.

4.14 Optus therefore considers that early notice of plans would ideally be included in the 3-year rollout plans; with information on the finalised technology mix for rollout regions to be available at least 9 months prior to RFS.

- 4.15 Information regarding individual premises is required for the development of accurate and efficient end-user communications. This information type should include data on access type, line speed and line quality at an address level.
- 4.16 Similarly, it would be beneficial for RSPs to have access to information on the status of NBN migration orders. This is useful to support the managed disconnection process – particularly, in order to efficiently manage the costly targeted processes for those customers who genuinely haven't yet placed an NBN order (refer to Section 3).

Limiting information flows

Q13 – Where end-user churn occurs in the transition to the NBN, is there a legitimate need for the 'losing' retail service provider to be supplied with the identity of the 'gaining' service provider?

Q14 – In the interests of 'ensuring symmetry' in the disclosure of information, could the proposed licence condition restrict NBN Co from disclosing information? If so, what information should be prohibited from disclosure?

Q15 – Should there be restrictions on NBN Co supplying commercially sensitive information of its customers to a losing network service provider? If so, how would this be address in the proposed licence condition?

Q16 – Would retail service providers be likely to exercise their rights under Part XIC to prevent NBN Co disclosing information to certain recipients (for instance, Telstra)?

- 4.17 As set out in Section 3, Optus considers that end-user churn information should be supplied in order to manage the scenarios of 'incorrect' churn. Under existing arrangements, Telstra already has the ability to determine the gaining provider. This gives Telstra a competitive advantage to use this information in order to manage incorrect churn, and to provide additional customer insights to support targeted win-back campaign.
- 4.18 In the interests of 'ensuring symmetry' NBN Co should provide the same information to RSPs and in the same timeframe as it provides to Telstra. Only by disclosing this information on equivalent terms would NBN Co be able to meet its 'non-discrimination obligations' set out in Part XIC of the Competition and Consumer Act.

Manner and form of disclosure

Q17 – What should be the form of disclosure of information by NBN Co? What information should be disclosed as, for instance, data, reports or as briefings?

Q18 – Should the form in which information is disclosed be left to NBN Co to decide, but subject to a guiding principle that the format be readily accessible to the target recipients?

- 4.19 As set out in Section 3, the format of disclosure by NBN Co should be subject to a guiding principle that any information disclosed should be in an appropriate format so that that it is readily able to be interpreted by relevant parties.
- 4.20 Optus considers that the form of disclosure should at the very least replicate the existing disclosure requirements that NBN Co provides to Telstra. This includes content, format and timing. In addition, Optus also proposes that all information disclosure updates include a summary statement that identifies the key inclusions in the disclosure, as well as clarification as to whether the disclosure outcomes differ from previous disclosures and/or forecasts.

Level of detail

Q19 – What level of detail should NBN Co be required to disclose? What information should be disclosed in greater detail, and what information could be disclosed in summary?

Q20 – In what circumstances should NBN Co make explanatory statements about the information it discloses?

- 4.21 As set out in Section 3, Optus considers that NBN Co should disclose all the same information, in the same format and timeframe, that is discloses to Telstra. In addition, Optus also proposes that all information disclosure updates include a summary statement that identifies the key inclusions in the disclosure, as well as clarification as to whether the disclosure outcomes differ from previous disclosures and/or forecasts.
- 4.22 Optus also considers that where there are substantial variations between two sequential disclosure reports, RSPs should be able to request a substantiation report to be provide further explanation.

Recipients of the information

Q21 – To whom should NBN Co disclose the information?

Q22 – Should any requirements or pre-conditions be placed on parties seeking to access the information?

Q23 – Specifically, in respect of vertically integrated service providers, should restrictions be imposed to limit access to information to the retail arm and prevent disclosure to the infrastructure arm?

- 4.23 Refer to Optus' comments in Section 3.

Timeliness of disclosure and maintaining currency over time

Q24 – How should the licence condition ensure that information is provided in a timely fashion?

Q25 – How frequently should information be disclosed? What types of information should be disclosed more frequently (weekly, fortnightly, monthly), and what information should be disclosed at longer intervals (quarterly, biannually, annually)?

Q26 – How should the proposed licence condition deal with changes to the information that should be disclosed? For instance, should the proposed licence condition incorporate guiding principles that enable the condition to adapt to future changes, or include a notification obligation?

- 4.24 As set out in Section 3, Optus considers a principle should be that the disclosure of information is made available to all parties at the same time. Notwithstanding the opportunity to consult with RSPs, information could be provided via a centralised server/portal with an email notification sent to nominated RSP contacts each time a file is uploaded. The form of this notification would include the title of the relevant file, and a summary statement of any changes from previous versions of that disclosure.
- 4.25 Optus considers that all information disclosures should be made available to all RSPs (including Telstra) on a contemporaneous basis.

Compliance monitoring and enforcement

Q27 – What should be done to ensure compliance with the proposed licence condition and to facilitate compliance monitoring and enforcement by the relevant agencies?

4.26 Refer to Optus' comments in Section 3.