

## **TELSTRA CORPORATION LIMITED**

### **Submission on proposed NBN Co Carrier Licence Condition concerning information disclosure**

24 April 2015

## 1. Introduction

On 24 March 2015, the Australian Competition and Consumer Commission (**ACCC**) released a discussion paper requesting input into a proposed NBN Co Carrier Licence Condition (**CLC**) about information disclosure. This submission sets out Telstra's views on the proposal.

Telstra understands that the immediate context for the CLC consultation is to frame ACCC and industry consideration of the information security arrangements provided for by the Migration Plan Principles and the Varied Migration Plan. The Department of Communications (**the Department**) has also stated that the CLC is intended to ensure 'symmetry' between Telstra and other retail service providers (**RSPs**) in respect of relevant NBN-rollout and related information exchanged under the Definitive Agreements (**DAs**), to ensure Telstra is not unfairly advantaged. Telstra acknowledges the importance of information symmetry and that it is not perceived to have an unfair advantage.

Telstra supports the implementation of the CLC and agrees that NBN Co should publish more (and more detailed) information in relation to its rollout. However, the issue of what information is provided to RSPs by NBN Co should not be viewed as a 'Telstra-centric' one. The main benefit to be derived from NBN Co increasing transparency around its network rollout is that this will empower **all** RSPs, including Telstra, to more effectively promote the NBN rollout, the products available and encourage timely migration by end users to the NBN. The information that is most important to RSPs is not necessarily information that Telstra receives under the DAs; that information is being provided by NBN Co to, and used by, Telstra for the purpose of executing the DAs.

Telstra encourages the ACCC to focus the CLC on the information and data that all RSPs need in order to best promote NBN migration for end users. This is the best way to achieve informational 'symmetry'.

In Telstra's view, the primary principles governing the way the CLC should be framed are:

- 1. What NBN rollout information do RSPs need to most effectively promote migration to the NBN to their end-users?** This should be the fundamental principle underlying the CLC with the starting point being to consider the type, timing and format of information that would most help RSPs to compete with each other, and promote timely migration of end users to the NBN.
- 2. What information is needed to improve the end user migration experience?** Telstra recognises that more accurate and up-to-date network and rollout information will also lead to a better end to end migration experience for many end users.
- 3. Information needs to promote consistency across all rollout regions, networks and technology types.** The same type of information needs to be made available to all RSPs regardless of where the NBN is being rolled out (ie, new estates, in areas currently serviced by the legacy Telstra networks, and in areas serviced by other networks or by NBN Co using acquired or relevant network infrastructure of non-Telstra parties).

Telstra considers that it then makes sense to also consider as a further 'check' whether any of the information which NBN Co provides to Telstra under the DAs might still provide Telstra with an unfair commercial advantage over other RSPs.

We acknowledge that information obtained under the DAs should not place Telstra in (or be perceived to place Telstra in) a position of unfair commercial advantage over other RSPs. However fulfilling the three principles above will address these concerns as well as providing an appropriate set of principles for crafting a CLC. If the information suggested in this submission is provided to RSPs on a regular and timely basis, RSPs will have what is required to compete effectively in the market and Telstra will not be placed in a position of unfair commercial advantage.

Balanced against the above principles, we also submit that any information disclosure by NBN Co should not be absolute. Due to Telstra's role in the migration process, as the disconnecting network owner, some of the information exchanged between NBN Co and Telstra will incorporate Telstra's own

confidential network information. It has always been recognised that network information can be sensitive and detailed disclosure of such information can give rise to very real security risks. This information should not be required to be disclosed by NBN Co to third parties, without Telstra's consent.

We submit that any proposed CLC therefore needs to appreciate the confidentiality of Telstra's network information and strike a balance between disclosing relevant migration information to RSPs and protecting the confidentiality of network information that does not give rise to any real competitive advantage.

## 2. Context for the proposed CLC

### Background

In April 2009, the Government established NBN Co, with responsibility for progressively overbuilding most of Telstra's existing copper and hybrid fibre-coaxial (HFC) networks and replacing them with a nationwide Fibre to the Premises (FTTP) network covering at least 93% of premises. In April 2014, the Government issued a new Statement of Expectations instructing NBN Co to adopt a 'multi-technology mix' (MTM) rollout. Under the MTM rollout model, NBN Co will acquire Telstra's copper and HFC networks to deliver an NBN service.

On 14 December 2014, Telstra and NBN Co entered into amended DAs to give effect to the new MTM approach. Under the amended DAs, Telstra has agreed to incrementally transfer its legacy copper network and HFC network to NBN Co, which NBN Co may then use to deploy the NBN as Fibre to the Node (FTTN), Fibre to the Basement (FTTB) or HFC architecture. As a consequence of this approach, Telstra will have increased involvement in the NBN Co rollout and NBN Co will provide Telstra with information about the design and construction of the network and activation of services at premises.

Under the previous FTTP NBN model, information disclosed to Telstra was regulated in a number of ways. While these regulations are continuing as set out below, the Minister has proposed a different approach to information security for information received by Telstra from NBN Co in relation to FTTB, FTTN and HFC premises, specifically, the imposition of a CLC on NBN Co.

The consultation document for the varied Migration Plan Principles provided, in this regard:<sup>1</sup>

*A carrier licence condition will be imposed on NBN Co, requiring it to share rollout related information with all retail service providers in a manner consistent with NBN Co's existing non-discrimination obligations. This will be developed in 2015, subject to consultation conducted by the ACCC with industry stakeholders regarding the type of information they will require from NBN Co. The overarching object of the licence condition is to ensure symmetry between Telstra and all other retail service providers in respect of relevant NBN-rollout and related information. This will ensure that Telstra does not have any actual or perceived information advantage by virtue of its role as the owner of copper and HFC networks being acquired by NBN Co.*

The CLC will complement other protections that govern this information, including:

- The continued operation of the competition provisions of the *Competition and Consumer Act 2010* (Cth) (Part IV and XIB);
- The confidentiality clauses in Telstra's wholesale contracts; and
- Telstra's Structural Separation Undertaking information security arrangements which continue to apply to restrict Telstra's disclosure and use of any information obtained under wholesale contracts for regulated services.

### Purpose and objectives of the CLC

- (a) *What NBN rollout information do RSPs need?*

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<sup>1</sup>[http://www.communications.gov.au/consultation\\_and\\_submissions/submissions\\_to\\_the\\_variation\\_of\\_telstras\\_migration\\_plan\\_regulatory\\_instruments\\_consultation\\_paper](http://www.communications.gov.au/consultation_and_submissions/submissions_to_the_variation_of_telstras_migration_plan_regulatory_instruments_consultation_paper)

As stated above, the Minister has suggested that increased disclosure of FTTN, FTTB and HFC information should be regulated by a CLC which promotes 'symmetry' between Telstra and all other RSPs in respect of relevant NBN-rollout and related information.

In achieving this objective, the CLC should be focussed on identifying what rollout information would be of most commercial value to RSPs to enable them to identify upcoming regions, MTM technologies and products, and market to, and manage migration of, premises in those regions effectively.

If the CLC development process interpreted the concept of 'symmetry' in a narrow way, that is by viewing the current DA information flows as simply an itemised list of data for RSPs, there is a risk that the CLC, while still being beneficial, will not provide RSPs with the information they most need to compete on a level playing field.

Telstra considers that the CLC should be developed, in the first instance, by identifying:

- what information RSPs need to best promote the NBN and facilitate a smooth migration for end users; and
- the format, timeframe(s) and process for updating information that would be of most use to the widest set of RSPs.

(b) *Focus on what will benefit end users*

Migration experience to date has been mixed for many end users regardless of their service provider on Telstra's network and their RSP on the NBN. Telstra recognises that a better, more coherent and transparent process is needed to bring all stakeholders into building and managing NBN migration at every step of the process. One way of promoting this transparency is to ensure that all RSPs are provided with more detailed, predictable and relevant rollout information, in a format which allows them to best service end users.

The need for a more transparent and coherent approach to migration (and publication of information by NBN Co) has been recognised by a number of stakeholders, including the Government. Currently, the Government, in consultation with industry, is developing the Migration Assurance Policy<sup>2</sup> (**MAP**) and Industry Migration Arrangements<sup>3</sup>.

The MAP identifies two overarching requirements for successful end-to-end migration: 1) the clear allocation of roles and responsibilities; and 2) adequate information sharing and data stability. The implementation of this CLC will support the second overarching requirement set out in the MAP and ensure greater coherency throughout the migration process for end users.

(c) *No unfair commercial advantage to Telstra under the DAs*

Telstra agrees that the CLC should ensure that the type and scope of information disclosed under the CLC removes the potential for Telstra to have an unfair competitive advantage over other RSPs by virtue of information disclosed to it under the DAs.

### 3. Information disclosure

#### What information should be made available?

Currently, NBN Co is required to publish information about its FTTP network, pursuant to NBN Co's special access undertaking (**SAU**). However, for various reasons, NBN Co is not currently able to comply with these provisions. Consequently, very limited information is available to RSPs concerning future rollout plans and proposed technologies.

Telstra has set out in the Annexure to this submission a proposed template that could form part of the CLC setting out the specific categories of information and how these would be updated and refined over

<sup>2</sup>Department of Communications, *Implementation of the National Broadband Network: Migration Assurance Policy Consultation Paper*, September 2014.

<sup>3</sup>Department of Communications, *Implementation of the National Broadband Network: Migration Assurance Policy Consultation Paper*, September 2014.

time, and become more granular and helpful to RSPs (including Telstra as an RSP), as NBN Co's planning becomes more certain and construction work is undertaken.

As a starting point, RSPs need to be provided with detailed information concerning key NBN network updates and NBN network milestones as set out below:

- **NBN network planning forecasts and regular updates:** This information is most valuable to RSPs as it allows them to manage expectations and identify which end users should be targeted for NBN migration. These updates would include the following for each rollout region:
  - the anticipated network footprint;
  - footprint boundary to be updated and to become more granular as the construction process is completed and Ready for Service (**RFS**) becomes more certain;
  - actual ready for service dates which should be accurate to a level of 90% with a glide path to 100%;
  - the access technology that is intended to be used for premises within each rollout region; and
  - address serviceability by service class and populated in the Historical Footprint List (**HFL**) (noting that this information will only be available from RFS).
- **NBN network milestones:** This information will provide RSPs with useful milestones and symmetry in informational outcomes. Telstra suggests that NBN Co should provide RSPs with the dates of the following milestones:
  - settlement of polygons and addresses
  - commencement of design;
  - expected/actual construction commencement; and
  - forecast RFS.

The above information should be provided in relation to all networks which relate to the NBN, whether new estates, Telstra's networks, or other third party networks as set out in more detail below. NBN Co should also be required to provide information as to whether they intend to overbuild an existing third party network and when an RSP requests a technology change at Location identification (Loc ID) level, the HFL should reflect this change in a timely manner.

The level of detail provided for the above points will depend upon the stage of the rollout. Telstra expects that the information for regions where the rollout has not commenced will be relatively high level in the first instance, then increase in granularity as the RFS date approaches and the migration window commences. In Telstra's view, provision of this information on a monthly publishing basis would give sufficient indication of progress. The provision of this information should also be subject to Service Level Agreements (**SLA**) to ensure accuracy, timeliness and serviceability.

Additionally, in the context of end user FTTN/B transfer, the ACCC has raised whether there is a legitimate need for losing RSPs to be provided with identity of gaining RSPs given commercial sensitivity of this information or whether NBN Co could be restricted from providing gaining RSP information to any service provider (including Telstra). On this point, Telstra submits that this issue is appropriately dealt with through the Communications Alliance working group that has been established to develop this process and should not be the subject of any regulation under the CLC.

### What information should not be made available?

In accordance with the principles proposed by Telstra and the over-arching object of the CLC put forward by the Department, the information that should be provided to RSPs by NBN Co under the CLC is 'relevant NBN-rollout and related information'.

The key word here is 'relevant'. As set out in the ACCC's consultation paper,<sup>4</sup> information about contract management between Telstra and NBN Co would be likely to fall outside the scope of the licence condition. Telstra agrees with this proposition. Further, in the interests of efficiency and network security, Telstra submits that RSPs do not require access to all information being exchanged between NBN Co and Telstra. The reasons for this are threefold.

First, there will be some information exchanged under the DAs which will be clearly outside the scope of the proposed CLC (for example, contract management issues). Where there is no direct relevance and/or the information is commercially sensitive, this information should not be disclosed.

Second, some of the information that will be exchanged between Telstra and NBN Co, will be Telstra's confidential network information and, as such, should not be disclosed to RSPs. Disclosure of this information gives rise to real and material network security issues, especially in the event that the CLC requires this information to be made available to the public in addition to RSPs. The information yields no competitive advantage for Telstra and such detailed information is not required for migration coherency.

Third, information obligations should be appropriate and proportionate – in the interests of efficiency and to avoid unnecessary or inefficient cost to NBN Co. There is little point requiring NBN Co to make available large volumes of detailed network information to all parties (taken from a 'shopping list' of information supplied to Telstra under the DAs for an entirely different purpose), where this will not provide RSPs with useful or practical insight into issues which are most relevant to their commercial strategy.

### Timing and format of information

Information provided to RSPs under the CLC needs to be provided on a 'fit for purpose' basis – meaning in a timeframe and format that facilitates the objectives above.

Telstra sees little value in RSPs being provided with verbatim reports of the data provided by NBN Co to Telstra under the DAs. This type of reporting is liable to give rise to efficiency issues by requiring RSPs to not only sort through, identify and interpret relevant data, but also invest in fit for purpose, secure IT systems. There is also the concern that confidential network information may be inadvertently caught up in these types of releases.

The preferable approach is for NBN Co to publish a standard, management and operation style report as set out in the ACCC consultation paper. Basing these reports on templates would allow RSPs to easily identify and categorise relevant information and would ensure that only relevant information of competitive value is provided.

In the Annexure, Telstra has set out a proposed template for how these reports could be structured (referring back to the information flows identified by the ACCC in its consultation paper, where appropriate). Telstra suggests that the information referred to in this template should be provided to RSPs for each rollout region on a monthly basis. Using this type of reporting would allow for flexibility as set out below. In addition, provision of the information set out in the Annexure should be relatively low cost, but will provide substantially all of the information that RSPs need in order to compete and promote their NBN services. Further, provision of the information set out in the Annexure will not raise confidentiality or security issues in relation to the Telstra network.

### Flexibility

A key learning from the FTTP migration so far is that it is not possible to predict all of the challenges which may arise in the course of the NBN rollout and migration implementation.

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<sup>4</sup> [http://www.accc.gov.au/system/files/DISCUSSION%20PAPER%20-%20Proposed%20NBN%20Co%20Information%20Disclosure%20Licence%20Condition%20-%20March%202015\\_0.pdf](http://www.accc.gov.au/system/files/DISCUSSION%20PAPER%20-%20Proposed%20NBN%20Co%20Information%20Disclosure%20Licence%20Condition%20-%20March%202015_0.pdf), p12.

New, unanticipated challenges are still likely to arise with an MTM migration. Therefore, the CLC must have adequate flexibility to allow for changes. If the management and operational style report is implemented as suggested above, the CLC should also provide for methods by which the template could be amended from time to time to allow for the disclosure of more information (or to change the type of information provided) where relevant.

## Consistency

In order to be of most value to RSPs, the information being provided needs to promote consistency across all rollout regions, networks and technology types. In practice, this means that the same type of information needs to be made available to all RSPs regardless of where the NBN is being rolled out (ie, new estates, in areas currently serviced by the legacy Telstra networks, and in areas serviced by other networks or by NBN Co using acquired or relevant network infrastructure of non-Telstra parties).

Further, the reports submitted to RSPs should be generally consistent both across those reports and more generally. For example, naming conventions should be consistent and transferable across all of NBN Co's reports. The CLC should also require consistency and a minimum level of quality with respect to data integrity (for example, 99% data integrity).

Provisions will also need to be made regarding the level of information that can be provided in respect of Adequately Served networks.

## 4. Conclusion

Telstra supports the implementation of a proposed CLC to promote greater transparency by NBN Co of its rollout to RSPs.

However, Telstra does not support increasing transparency around large volumes of highly detailed network data, which risks prejudicing network security and/or where this would cut across the confidentiality of its own network information.

Telstra also questions the value of using a list of DA information flows as a 'shopping list' of information categories for publication under the CLC. Telstra submits that it would be of more value to RSPs if the CLC identified information types that would achieve the objectives of the CLC – being a 'level playing field' for all RSPs, and improving the experience of end users.

The emphasis should be on providing access by all RSPs (including Telstra in its capacity as an RSP) to up-to-date and fit for purpose information regarding:

- the NBN footprint – including premises lists, RFS dates, construction progress and timing and technology choices for individual premises;
- accurate and timely product availability and serviceability information, including connection timeframes and serviceability levels throughout the migration window;
- timely information about other processes that affect RSPs ability to migrate customers; and
- promoting consistency of disclosure regardless of network type (new estate or acquired) or technology being used.

Telstra considers that the regular publication of this information would substantially improve the ability of all RSPs to support and improve the end-user migration experience as they transition to the NBN. Telstra has provided a suggested 'template' which would achieve both the objective of symmetry, while delivering RSPs with practical and timely rollout information of the kind needed to better promote the migration and improve the end user experience.

## Annexure: Draft proposed template for NBN Co Carrier Licence Condition

Report on NBN Co Network Activities - for the Month ending [x]

NBN Network Updates					Date of NBN Network Milestones			
Anticipated Network Footprint	Footprint Boundary and Addresses	Actual Ready for Service Date	NBN Technology	Address serviceability	Polygons and addresses settled	Design Commencement	Expected/Actual Construction Start Date	Forecast Ready For Service Date
<i>[e.g. starts off at East Bendigo and ends up with specific boundaries, loc lds, etc, then gets more specific in next column]</i>	<i>[this would start off as a link to boundary information &amp; anticipated number of addresses, then get more specific]</i>	June 2018	FTTN. FTTB.			<i>[dates design parameters are supplied, technology and boundary points updated at left]</i>	February 2019	