

**TELECOMMUNICATIONS (MIGRATION PLAN
PRINCIPLES) DETERMINATION 2015**

TELECOMMUNICATIONS ACT 1997

COMMONWEALTH OF AUSTRALIA

I, MALCOLM BLIGH TURNBULL, Minister for Communications, make the following Determination under subsection 577BB(1) of the *Telecommunications Act 1997*.

Dated 21 January 2015.

A handwritten signature in black ink, appearing to read 'M. Bligh', written over a horizontal dashed line.

MALCOLM BLIGH TURNBULL
Minister for Communications

Part 1 – Preliminary

1. Name of Determination

This Determination is the *Telecommunications (Migration Plan Principles) Determination 2015*.

2. Commencement

This Determination commences on the day after it is published on the Department's website in accordance with subsection 577BB(3) of the Act.

3. Revocation

The *Telecommunications (Migration Plan Principles) Determination 2011* is revoked by this Determination.

4. Objects

The object of this Determination is to set out principles that:

- (a) provide for the efficient and timely disconnection of wholesale services and fixed-line carriage services from a separating network as the NBN Co fixed-line network is deployed;
- (b) provide for equivalence in the disconnection processes that Telstra will implement for its wholesale customers and retail business units supplied using the copper network; and
- (c) provide reasonable regulatory certainty for Telstra in connection with the activities it is required to undertake in the course of Migration as the operator of the separating networks.

5. Definitions and Interpretation

(1) In this Determination:

access technology means an access technology used by NBN Co to connect a premises or a location to the NBN Co fixed-line network, which may include the following access technologies:

- (a) fibre-to-the-premises;
- (b) fibre-to-the-node;
- (c) fibre-to-the-basement; or
- (d) hybrid fibre-coaxial cable.

acquired network means a fixed line telecommunications network (excluding a Third Party HFC Network (or any part of it) or any network (or any part of it) transferred to NBN Co under the Infrastructure Services Agreement) where NBN Co or a related entity of NBN Co has entered into an agreement, arrangement or understanding to acquire the ownership, control or operation of that network from a person (other than NBN Co or a related entity of NBN Co).

acquired network rollout region means a geographic region determined by NBN Co that is or will be serviced by an acquired network.

Act means the *Telecommunications Act 1997* (Cth).

adequately served in respect of a premises, means:

- (a) that premises is capable of being connected to a network (**Alternative Network**) to receive fixed-line carriage services where:
 - (i) that Alternative Network is used, or is capable of being used, to supply a carriage service where the download transmission speed of the carriage service is normally more than 25 Mbps; and
 - (ii) a Layer 2 bitstream service (as defined in the Act) is available for supply to carriage service providers by the owner or operator of the Alternative Network by virtue of that Layer 2 bitstream service being declared by the ACCC under Part XIC of the Competition Act or otherwise being required by law to be supplied on the Alternative Network; and
- (b) either:
 - (i) that Alternative Network is a Telstra fibre network which is capable of supplying a standard telephone service under the universal service obligation and Telstra has connected the premises with a fibre line; or
 - (ii) that Alternative Network is not a Telstra fibre network but is capable of supplying a standard telephone service which would enable Telstra to perform its universal service obligations and is connected to the premises with a fixed line; and
- (c) that premises is:
 - (i) not passed;
 - (ii) not connected only by a copper line which is owned by Telstra;
 - (iii) not connected only by a copper line which is owned by Telstra and a line that is part of the hybrid fibre-coaxial network or a line connected to the Optus HFC Network;
 - (iv) not connected only to the Optus HFC Network; or
 - (v) in the fixed footprint list for any rollout region at any time.

Affected Premises means a premises which is passed on or after disconnection date that Telstra is prevented by law from disconnecting or ceasing provision of copper services or hybrid fibre-coaxial network services to.

cease sale commencement date means, for a rollout region, the date published by Telstra that will be 10 business days after the region ready for service date for that rollout region or such other date agreed between Telstra and NBN Co and approved by the Minister.

CMUX means a customer multiplexer.

Competition Act means the *Competition and Consumer Act 2010* (Cth).

confidential information relating to a wholesale customer includes but is not limited to:

- (a) information identifying a wholesale customer or an end user of a wholesale customer, which was provided by the wholesale customer in connection with the supply by Telstra of wholesale services to the wholesale customer; and
- (b) information derived from information of the kind described in paragraph (a) of this definition, whether or not in an aggregate form, that:
 - (i) would enable the identity of a wholesale customer to be ascertained; or
 - (ii) would enable the identity of an end user of a wholesale customer to be ascertained;

but does not include:

- (c) information of the kind described in subparagraph (b)(i) where the information is aggregated on a national basis; or
- (d) information which is already public.

Consumer Protection Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Continuity Deed means the deed entitled 'Continuity Deed' dated 14 December 2014 and made between Telstra and NBN Co or any replacement deed (as approved by the Minister) entered into between the same parties to replace the original deed as contemplated by the DAR.

copper line means a copper or aluminum wire based line or series of lines that is, or immediately prior to the transfer to NBN Co under the Definitive Agreements was, part of a copper network that, together with any customer cabling, forms a connection to premises.

copper network means a network in Australia over which Telstra is in a position to exercise control comprising copper or aluminium wire based lines:

- (a) from the network boundary point at each premises up to and including the first electronic remote access multiplexer (for example, a CMUX or RIM) immediately upstream of each such premises; or
- (b) from the network boundary point at each premises up to and including the MDF in a Telstra exchange (or similar location) immediately upstream of each such premises; or
- (c) from the first electronic remote access multiplexer immediately upstream of each premises up to and including the MDF in a Telstra exchange (or similar location) immediately upstream of each such electronic remote access multiplexer,

which is, or has been at any time, used to provide fixed-line carriage services, or wholesale services and includes each such electronic remote access multiplexer and MDF.

copper service means:

- (a) a fixed-line carriage service supplied by Telstra using the copper network; and
- (b) a wholesale carriage service; and
- (c) an ULLS supplied by Telstra using the copper network; and
- (d) a line sharing service (LSS) supplied by Telstra using the copper network,

but does not include:

- (e) a soft dial tone service; or
- (f) a network management service; or
- (g) any NBN based service.

copper sub-loop means a downstream copper line or part of a copper line terminating at the point at which Telstra's copper infrastructure physically connects to NBN Co's copper infrastructure after NBN Co acquires any part of that copper infrastructure.

DAR means the deed entitled 'Deed of Amendment and Restatement' dated 14 December 2014 and made between Telstra and NBN Co or any replacement deed (as approved by the Minister) entered into between the same parties to replace the original deed, as contemplated by the original deed.

Definitive Agreements means each of the following:

- (a) the Implementation and Interpretation Deed;
- (b) the Subscriber Agreement;
- (c) the Infrastructure Services Agreement;
- (d) the Access Deed dated 23 June 2011 and made between Telstra and NBN Co as varied by the DAR;
- (e) the DAR;
- (f) the Continuity Deed and Licence Agreement; and
- (g) any other document agreed by the Minister, NBN Co and Telstra to be a Definitive Agreement,

in each case, in the form as at the date of this Determination and excluding any amendments after that date which have not been approved in writing by the Minister.

designated day has the same meaning as in section 577A of the Act.

detailed design document means, in respect of a rollout region, the detailed design document for that rollout region prepared in accordance with the Infrastructure Services Agreement.

disconnection commencement date means the date determined by NBN Co at its discretion for an initial release rollout region or acquired network rollout region and notified by NBN Co to Telstra.

disconnection date means:

- (a) in respect of a rollout region (except for a service continuity region), the date determined in accordance with the Definitive Agreements and which is:
 - (i) on or after the date that is 18 months; and
 - (ii) on or before the date that is 20 months,after the rollout region ready for service date for that rollout region;
- (b) in respect of a service continuity region, the date or dates determined in accordance with the Definitive Agreements and which is:
 - (i) on or after the date that is 12 months; and
 - (ii) on or before the date that is 14 months,after the rollout region ready for service date for that service continuity region; or
- (c) in respect of special services or special service inputs, the disconnection date for the applicable special services class determined in accordance with section 18.

disconnection schedule means the schedule of disconnection dates and other related disconnection milestones referred to in subsection 22(1), as published by Telstra from time to time.

End of the Rollout Date means the first of the following dates to occur:

- (a) the first date on which the number of premises that have been either passed or adequately served is at least 92% of the number of premises in Australia as at that date (as determined in accordance with the Definitive Agreements);
- (b) the date on which a Permanent Cessation of Rollout occurs; or
- (c) the date otherwise determined in accordance with the Definitive Agreements.

Excluded Event means:

- (a) a matter specified in Schedule 2 to this Determination; and
- (b) a matter specified in Schedule 3 to this Determination but only to the extent this results in Telstra being unable to perform any of its obligations under the migration plan and only for the period until Telstra is notified by

any person, or otherwise becomes aware, that the matter has been remedied or has otherwise ceased to affect Telstra's obligations under the migration plan.

For the avoidance of doubt, a matter will not be an Excluded Event to the extent it is caused by a failure by Telstra to fulfil an obligation which it owes otherwise than pursuant to the migration plan.

final fixed footprint list means, for a rollout region, the list of premises notified by NBN Co to Telstra, under and in accordance with the Definitive Agreements, as having been passed in that rollout region as at the disconnection date for that rollout region.

fixed footprint list means for a rollout region:

- (a) at any time prior to the relevant disconnection date, the proposed fixed footprint list for that rollout region; and
- (b) on and from the relevant disconnection date, the final fixed footprint list for that rollout region.

fixed-line carriage service means a fixed-line carriage service within the meaning of that term in section 577A of the Act other than a service of that kind that is specified in an instrument made under subsection 577A(20) of the Act.

Force Majeure Event means:

- (a) natural disaster;
- (b) failure of a supplier or public utility other than Telstra, beyond the reasonable control of Telstra or NBN Co;
- (c) industrial action or labour disturbance (excluding industrial action or labour disturbance only of the employees of Telstra or NBN Co, its subcontractors or any of its related entities);
- (d) an act of war (whether declared or not) or terrorism;
- (e) lightning, fire, earthquake, storm, flood or any other weather conditions which would be expected to place at risk the health or safety of the employees of Telstra or NBN Co or any other person;
- (f) currency restriction or embargo beyond the reasonable control of Telstra; or
- (g) any act or omission (including laws, regulations, disapprovals or failures to approve or accept) of any government or government agency,

but does not include an Excluded Event. For the purposes of this definition, in the case of Telstra 'related entity' does not include a Foxtel Entity or the Foxtel Partnership.

forecast ready for service dates means for each rollout region any forecast of the ready for service date for that rollout region notified to Telstra by NBN Co under the Definitive Agreements.

Foxtel means Foxtel Management Pty Limited (ACN 068 671 938) (for and on behalf of the Foxtel Partnership).

Foxtel Entity means each of Foxtel Cable Television Pty Limited (ACN 069 008 797), Customer Services Pty Limited (ACN 069 272 117) and Foxtel.

Foxtel Partnership means the partnership known as "Foxtel Partnership" between Telstra Media Pty Limited (ABN 72 069 279 027) and Sky Cable Pty Limited (ABN 14 069 799 640).

Frustrated means, in respect of a premises, that the premises is deemed to be frustrated, as determined in accordance with protocols agreed between NBN Co and the Department of Communications from time to time and which are published on NBN Co's website, as a result of being unable to be connected to the NBN Co fixed-line network because either:

- (a) the owner or occupier of the premises refuses to allow any access to that premises that is required for the connection to the NBN Co fixed-line network to occur; or
- (b) any legal impediment prevents the connection of the premises to the NBN Co fixed-line network.

Frustrated Premises means a premises that is identified in the NBN Co service qualification system as being Frustrated.

FTTB-connected premises means a premises within the fixed footprint list within a rollout region which is connected to the NBN Co fixed-line network using fibre-to-the-basement access technology.

FTTN-connected premises means a premises within the fixed footprint list within a rollout region which is connected to the NBN Co fixed-line network using fibre-to-the-node or fibre-to-the-distribution point access technologies.

FTTP-connected premises means a premises within the fixed footprint list within a rollout region which is connected to the NBN Co fixed-line network using fibre-to-the-premises access technology.

general principles means the principles at sections 5(8) to 5(11), 10(1), 10(2), 25, 27(1), 31, 32, 35 and 36 of this Determination.

HFC-connected premises means a premises within the fixed footprint list within a rollout region which is connected to the NBN Co fixed-line network using hybrid fibre-coaxial access technology.

HFC network management services means radio frequency leakage, forward or return path sweep, pilot or alignment services except as determined in accordance with the Definitive Agreements.

HFC PCD means a premises connection device used to connect in-building cabling to coaxial cable running from an HFC Tap.

HFC Tap means an access point on coaxial cable in the hybrid fibre-coaxial network or the coaxial cable of NBN Co's fixed-line network, to which another coaxial cable (that connects or is capable of connecting to an HFC PCD) connects or is capable of connecting.

hybrid fibre-coaxial network means a telecommunications network in Australia over which Telstra is in a position to exercise control:

- (a) that is used for the transmission of broadcasting services; and

- (b) the line component of which consists of optical fibre to connecting nodes, supplemented by coaxial cable connections from the nodes to the premises of end users,

whether or not the network is also capable of being used to supply an internet carriage service.

hybrid fibre-coaxial network service means a carriage service provided by Telstra using an hybrid fibre-coaxial line forming part of the hybrid fibre-coaxial network, other than a Permitted Service, HFC network management services or any NBN based service.

Implementation and Interpretation Deed means the Implementation and Interpretation Deed dated 23 June 2011 and made between Telstra and NBN Co as varied by the DAR in the form as at the date of this Determination and excluding any amendments after that date which have not been approved in writing by the Minister.

in train order premises means any of the following:

- (a) a premises in respect of which NBN Co notifies Telstra that, before the disconnection date for the rollout region in which that premises is located, an order for connection to the NBN Co fixed-line network has been received but connection has not been completed by the disconnection date for that rollout region;
- (b) a premises in respect of which NBN Co notifies Telstra that an order for connection to the NBN Co fixed-line network has been received between the disconnection date for the rollout region in which the premises is located and 25 business days after the disconnection date for that rollout region; or
- (c) a premises which becomes connected to the NBN Co fixed-line network within one month before the disconnection for the rollout region in which that premises is located.

Industry Migration Arrangements means any industry processes, policies, codes, protocols or arrangements used to facilitate the migration of carriage services from the separating networks to the NBN Co fixed-line network, under the Migration Assurance Policy Statement including to the extent if any that these are implemented through service provider rules or carrier licence conditions made under the Act.

Infrastructure Services Agreement means the Infrastructure Services Agreement dated 23 June 2011 and made between Telstra and NBN Co as varied by the DAR in the form as at the date of this Determination and excluding any amendments after that date which have not been approved in writing by the Minister.

initial release rollout region means:

- (a) a geographic region determined by NBN Co and notified to Telstra within which rollout of the NBN Co fixed-line network has commenced prior to the commencement of the Definitive Agreements; and
- (b) each rollout region agreed between Telstra and NBN Co and specified as an "FSA Module" in Annexure N of the Implementation and Interpretation Deed.

interim carriage service means any carriage service, including any feature or functionality associated with a carriage service, which is supplied or used to manage or mitigate a service disruption associated with Migration. Examples of interim carriage services include an interim wireless service, installation of temporary copper paths, call forwarding and call diversion.

Licence Agreement means the licence agreement between Telstra and NBN Co reached pursuant to the Continuity Deed or, if terminated, any other arrangement under which Telstra obtains a licence from NBN Co of certain assets and network infrastructure which Telstra has transferred to NBN Co, for the purpose of continuing to supply copper services and hybrid fibre-coaxial network services.

local number portability means the porting of local telephone numbers associated with carriage services to be disconnected and any other procedures necessary to allow an end user to continue to use that local telephone number for a carriage service supplied using another network.

MDF means main distribution frame.

Multi Dwelling Unit or **MDU** means a building or structure which comprises more than one premises (whether used for residential, business, government or other purposes) and which may include common areas.

MDU building means a building currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes that:

- (a) is at an addressable location; and
- (b) contains at least two separate premises (in addition to any MDU common area),

but, for the avoidance of doubt, does not include (without limitation):

- (c) two or more adjoining premises without a common entrance;
- (d) a collection of individual buildings which are each located on separate lots of a sub-divided block (for example, 15A Smith Street, 15B Smith Street); or
- (e) a single dwelling unit and a granny flat which is located on a single block.

MDU common areas means:

- (a) all of the areas within the property boundary of the parcel of land on which an MDU building is located which are outside of the area occupied by the other locations that are separate premises within that MDU building, and which areas may include, for example, one or more of the following:
 - (i) a concierge desk;
 - (ii) a foyer area;
 - (iii) concourse area;
 - (iv) a car park;
 - (v) central stairs;

- (vi) elevators;
 - (vii) swimming pool and common gym facilities;
 - (viii) a garbage room;
 - (ix) a communications room; or
 - (x) a communal entertainment, recreational or dining area; or
- (b) a common area within a single dwelling unit that NBN Co has notified to Telstra under and in accordance with the Definitive Agreements as being deemed an MDU common area.

MDU common area services means copper services or hybrid fibre-coaxial services supplied by Telstra to a premises that is an MDU common area.

Migration (Migrating or Migrate) means the process of disconnecting copper services or hybrid fibre-coaxial carriage services at a premises and connection to the NBN Co fixed-line network at the same premises.

Migration Assurance Policy means:

- (a) the Migration Assurance Policy Statement; and
- (b) Industry Migration Arrangements.

Migration Assurance Policy Statement means the policy statement (including any replacement or updated statement issued from time to time) by the Minister in respect of Migration, including overarching principles for the allocation of roles and responsibilities associated with Migration.

Minister means the Minister for Communications.

MTMRollout means the rollout of the NBN Co fixed-line network by NBN Co using a multi-technology mix approach determined by NBN Co on an area by area basis.

MTM variation means any variation made to the migration plan to implement or facilitate the implementation of the multi-technology mix model and associated arrangements contemplated by the Definitive Agreements.

NBN based service means a carriage service supplied by a retail service provider using an NBN Service.

NBN Co Design Rules means NBN Co's design rules for its MTM Rollout (as amended by NBN Co from time to time by notice to Telstra).

NBN Co fixed-line network means any fixed line telecommunications network that is owned or controlled by, or operated by or on behalf of, NBN Co or a related entity of NBN Co including fibre-to-the-premises (**FTTP**), fibre-to-the-basement (**FTTB**), fibre-to-the-node (**FTTN**) and hybrid fibre-coaxial cable access technologies, but excluding any telecommunications network to the extent that it is deemed to form part of the copper network or the hybrid fibre-coaxial network for the purpose of this Determination under subsection 5(8) or 5(10).

NBN Co FTTB Node means an NBN Co Node installed in or in proximity to an MDU to provide a NBN Service to premises in that MDU and that is not connected to the copper network other than at an MDF in that MDU.

NBN Co FTTN Node means an NBN Co Node other than an NBN Co FTTB Node.

NBN Co migration information has the meaning set out in Schedule 4 to this Determination;

NBN Co Node means a DSLAM (or equipment having similar functionality) used by NBN Co or a related entity of NBN Co for the purposes of providing a NBN Service.

NBN Service means any service provided by NBN Co or a related entity of NBN Co over the NBN Co fixed-line network (and for clarity, does not include any licence or other arrangement from NBN Co to Telstra under the Definitive Agreements).

NBN Serviceable means a premises within the fixed footprint list for a rollout region that NBN Co has determined is serviceable by the NBN Co fixed-line network for the provision of an NBN Service, as shown in the NBN Co service qualification system (for clarity, premises which are identified as "Service Class 0" in the NBN Co service qualification system are not NBN Serviceable).

Optus HFC Network means the coaxial cable in the hybrid fibre-coaxial cable network (and any amplifiers, taps, drop cables, nodes, and isolator/splitters associated with that coaxial cable) in Australia in respect of which Singtel Optus Pty Limited is in a position to exercise control.

parent rollout region means, in respect of a service continuity region, that rollout region that premises in the service continuity region had formed part of before being removed to form the service continuity region at 6 months before the disconnection date. For clarity, a service continuity region cannot itself be a parent rollout region.

Permanent Cessation of Rollout means a decision by the board of directors of NBN Co or the Commonwealth that would require NBN Co to permanently cease the rollout of the NBN Co fixed-line network.

Permitted Service means:

- (a) carriage services which are required, and used, only to enable the broadcast by Foxtel, using the hybrid fibre-coaxial network, of subscription television or audio broadcasting services or on-demand analogue or digital cable television or audio services, but which does not include internet protocol based services;
- (b) the retransmission by Telstra using the hybrid fibre-coaxial network, of digital free to air television signals to the locations within the suburb of Ellenbrook, Western Australia pursuant to contractual arrangements put in place by Telstra prior to the varied plan commencement date; and
- (c) carriage services which Telstra Multimedia Pty Limited is required to provide to certain subscription television providers or broadcasters using the hybrid fibre-coaxial network as at 20 June 2010, and which are to enable those subscription television providers or broadcasters to provide services, other than:
 - (i) internet protocol based services;

- (ii) voice services;
- (iii) broadband services; or
- (iv) services requiring a return path transmission over the hybrid fibre-coaxial network from the end user.

premises means each of the following:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;
- (b) a school as defined by the Department of Education or any other replacement Commonwealth Department or Agency with responsibility for school policy from time to time;
- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for a standard telephone service which is activated in compliance with the universal service obligation;
- (e) a payphone at a location at which Telstra is required to install or maintain a payphone in accordance with an instrument made under section 12EF of the Consumer Protection Act as in force from time to time;
- (f) a location which NBN Co is directed by the Minister to connect to the NBN Co fixed-line network; and
- (g) an MDU common area, where and for so long as it is notified by NBN Co to Telstra as being included in the fixed footprint list for any rollout region.

procedural principles means the principles in Part 4 of this Determination.

proposed fixed footprint list means, for a rollout region, the list of premises notified by NBN Co to Telstra as having been passed or which NBN Co intends will be passed in that rollout region at any time prior to the disconnection date for that rollout region, as updated from time to time by NBN Co in accordance with the Definitive Agreements.

pull-through means the process by which an existing copper line or existing hybrid fibre-coaxial line connecting a premises is used as a draw to pull through copper, fibre or hybrid fibre-coaxial lines as part of the connection process to the NBN Co fixed-line network.

related entity has the same meaning as in the *Corporations Act 2001* (Cth). **region ready for service date** means:

- (a) in relation to an initial release rollout region and acquired rollout region, the date notified by NBN Co as the disconnection commencement date for that rollout region;
- (b) for any service continuity region, the date which is 6 months before the disconnection date for the parent rollout region (subject to any transitional arrangements in respect of rollout regions that would otherwise have had a region ready for service date occurring prior to the varied plan commencement date and which may be set out in the migration plan); and

- (c) in relation to any other rollout region, the date notified to Telstra by NBN Co under the Definitive Agreements.

Relevant TAP means an HFC Tap or other access point on coaxial cable to which another coaxial cable (that connects or is capable of connecting to a premises) connects or is capable of connecting, and that other access point:

- (a) is owned by NBN Co or a related entity of NBN Co; or
- (b) forms, or will form at the region ready for service date for the rollout region containing that access point, part of a network that is owned or controlled by, or operated by or on behalf of, NBN Co or a related entity of NBN Co.

Replacement DAR means the replacement deed of amendment and restatement made between Telstra and NBN Co and entered into in accordance with the terms of the DAR excluding any amendments which have not been approved in writing by the Minister.

Restatement Date means the date on which all of the conditions precedent set out in the Replacement DAR are waived or satisfied, in accordance with its terms.

restore (restoration or restoring) means to reinstate an active copper service or hybrid fibre-coaxial network service that has been subject to temporary disconnection or service suspension.

retail business unit means a part of Telstra by which Telstra deals with its retail customers.

retail carriage services means fixed-line carriage services supplied by Telstra to a retail customer.

retail customer has the meaning given to that term in the structural separation undertaking.

retail line rental means the retail equivalent service of the wholesale line rental service.

retail service provider means a carriage service provider who supplies NBN based services over the NBN Co fixed-line network but, for clarity, does not include NBN Co.

RF means radio frequency.

RIM means remote integrated multiplexer.

rollout region means:

- (a) a service area module;
- (b) a Target MDU rollout region;
- (c) an initial release rollout region;
- (d) an acquired network rollout region;
- (e) an in-fill rollout region; and
- (f) a service continuity region.

separating network means:

- (a) a telecommunications network over which Telstra is in a position to exercise control that is not specified in an instrument made under subsection 577A(21) of the Act; and
- (b) for the purpose of this Determination, any part of the NBN Co fixed-line network to the extent that it is deemed to form part of the copper network or the hybrid fibre-coaxial network under subsection 5(8) or 5(10).

service continuity region means a rollout region comprising all premises within a parent rollout region that NBN Co notifies Telstra were not NBN Serviceable as at the date which is 6 months prior to the disconnection date for that parent rollout region.

special service inputs has the meaning given by subsection 18(2).

special services means the fixed-line carriage services which are described in Schedule 1 to this Determination.

specific principles means principles in Part 3 of this Determination that are not general principles.

Standard Industry Process means a technical industry process established under a registered code or other binding industry process or practice related to the disconnection of carriage services provided using the copper network.

structural separation undertaking means the undertaking given by Telstra to the ACCC under section 577A of the Act.

Subscriber Agreement means the Subscriber Agreement dated 23 June 2011 and made between Telstra and NBN Co as varied by the DAR, in the form as at the date of this Determination and excluding any amendments after that date which have not been approved in writing by the Minister.

Target MDU rollout region means a rollout region comprising premises in an MDU or MDUs, as notified by NBN Co to Telstra under and in accordance with the Definitive Agreements.

Telstra CMTS means Telstra's Cable Modem Termination System.

Telstra hybrid fibre-coaxial network footprint means the parts of the hybrid fibre-coaxial network comprising:

- (a) coaxial cable which has been constructed by or on behalf of Telstra or Telstra Multimedia Pty Ltd (other than Telstra or Telstra Multimedia Pty Ltd acting as a contractor of NBN Co); or
- (b) any replacement (but not any geographic extension) of coaxial cable referred to in paragraph (a) of this definition constructed by or on behalf of NBN Co,

in any case, to which a premises is capable of direct connection other than and excluding for the avoidance of doubt any such connection which requires use of any coaxial cable which has been constructed by or on behalf of NBN Co, except where that coaxial cable is:

- (c) a lead-in directly connected to coaxial cable to which paragraph (a) or (b) of this definition applies; or
- (d) coaxial cable to which paragraph (b) of this definition applies.

Third Party HFC Network means the coaxial cable in a hybrid fibre-coaxial cable network (and any amplifiers, taps, drop cables, nodes, and isolator/splitters associated with that coaxial cable) in the footprint of the NBN Co fixed-line network which passes more than one million premises, and in respect of which neither Telstra nor NBN Co is in a position to exercise control.

ULLS means an unconditioned local loop service.

universal service obligation has the same meaning as in the Consumer Protection Act.

varied plan commencement date means the date on which the variations set out in the varied migration plan submitted by Telstra to the ACCC in or about January 2015 come into force, in accordance with the terms of the varied migration plan.

varied migration plan means the migration plan as varied in order to comply with this Determination.

Verified means in relation to fibre, that fibre has been identified by NBN Co or a related entity of NBN Co as accepted into operation and ready for the provision of NBN Services as part of a bona fide commercial arrangement to provide those NBN Services, and not as part of any pilot, trial or test provision of services (whether or not that commercial arrangement has been entered into and whether or not that fibre is used for the provision of NBN Services).

wholesale customer means a carriage service provider to whom a wholesale service is provided.

wholesale line rental means the line rental service declared by the ACCC under subsection 152AL(3) of the Competition Act for the purposes of Part XIC of the Competition Act.

wholesale service means a copper service supplied by Telstra to a carriage service provider in order that the carriage service provider can provide a carriage service.

- (2) In this Determination, **independent telecommunications adjudicator** has the same meaning as in section 152EQ of the Competition Act.
- (3) For the purposes of this Determination and the migration plan, if:
 - (a) Telstra supplies a fixed-line carriage service to a carriage service provider; and
 - (b) the fixed-line carriage service is supplied to the carriage service provider in order that the carriage service provider can provide a carriage service; then the fixed-line carriage service that is, or is to be, supplied by Telstra to the carriage service provider is a **wholesale carriage service**.
- (4) For the purposes of this Determination and the migration plan:
 - (a) Telstra **disconnects** a premises from a separating network when it ceases to supply fixed-line carriage services (other than special services and special service inputs) to that premises using that separating network; and

- (b) Telstra **disconnects** a separating network in a rollout region when it ceases to supply fixed-line carriage services (other than special services and special service inputs) using that separating network to premises in that region that are passed by the NBN Co fixed-line network, other than:
 - (i) in the case of a copper network—premises to which one or more of the relevant circumstances in subsection 12(11) apply; and
 - (ii) in the case of a hybrid fibre-coaxial network—premises to which one or more of the relevant circumstances in subsection 13(8) apply;
 - (c) Telstra **disconnects** a fixed-line carriage service supplied to a premises in a rollout region from a separating network in a rollout region when it ceases to supply that fixed-line carriage service to that premises using that separating network; and
 - (d) Telstra **disconnects** a soft dial tone service from a premises that is passed when Telstra removes the soft dial tone service from an active copper service supplied to that premises.
- (5) For the purposes of this Determination and the migration plan, a premises is **passed by the NBN Co fixed-line network** if the premises is included in the fixed footprint list determined based on information notified by NBN Co to Telstra from time to time, under and in accordance with the Definitive Agreements, of premises that have been passed by the NBN Co fixed-line network and that:
- (a) in the case of a premises that is referable to a location that was identified in the detailed design document for a rollout region (or was subsequently determined by NBN Co) as intended to be connected to the NBN Co fixed-line network by fibre-to-the-premises or fibre-to-the-basement access technologies, that NBN Co determines, in accordance with the NBN Co Design Rules, that the premises is, or is capable of being, physically connected to Verified optical fibre in the NBN Co fixed-line network; or
 - (b) in the case of a premises that is referable to a location that was identified in the detailed design document for a rollout region (or was subsequently determined by NBN Co) as intended to be connected to the NBN Co fixed-line network by fibre-to-the-node or fibre-to-the-distribution point access technologies, that the premises is electrically connected to, or NBN Co has determined in accordance with the NBN Co Design Rules that the premises is capable of being electrically connected to, a NBN Co FTTN Node or the relevant technology at the distribution point in the NBN Co fixed-line network by a copper or aluminium wire based line, except where the location is served using a small pair gain system; or
 - (c) in the case of a premises that is referable to a location that was identified in the detailed design document for a rollout region (or was subsequently determined by NBN Co) as intended to be connected to the NBN Co fixed-line network by a hybrid fibre-coaxial cable access technology, that an operational port is available for connection to that premises (or would be available following upgrade of a Relevant Tap) and the network containing the Relevant Tap is suitably dimensioned and RF tuned; or
 - (d) in any other case, that the premises is connected to, or NBN Co has determined in accordance with the NBN Co Design Rules that the premises is capable of being connected to, the NBN Co fixed-line network,

in each case, irrespective of whether or not the premises is NBN Serviceable.

- (6) For the purposes of this Determination and the migration plan:
- (a) ***soft dial tone service*** means a service that when applied to a copper service allows an end user at a premises in a rollout region connected by a copper line over which Telstra supplied a retail standard telephone service or a wholesale line rental service to call Telstra's customer service and fault centre numbers and to make emergency calls, but does not otherwise allow end users to make or receive other calls, or to receive other carriage services; and
 - (b) that service is taken not to be a fixed-line carriage service.
- (7) In addition to being interpretive provisions, for the purposes of this Determination, subsections 5(8) to 5(11) inclusive will be taken to be general principles.
- (8) For the purposes of this Determination and the migration plan, where a service is supplied by Telstra using a copper line or a copper sub-loop licensed by NBN Co to Telstra under the Continuity Deed or the Licence Agreement:
- (a) that copper line or copper sub-loop (including any associated spectrum licensed to Telstra) will be deemed to form part of the copper network for the purpose of this Determination and the migration plan; and
 - (b) subsection 5(4) will apply in respect of the disconnection of any copper service provided over that copper line or copper sub-loop, unless and until all relevant copper services are disconnected, at which time the copper line or copper sub-loop (including any associated spectrum licensed to Telstra) will cease to form part of the copper network for the purpose of this Determination and will be taken to form part of the NBN Co fixed-line network.
- (9) Without limitation to subsection 5(8), where any assets forming part of the copper network are used by NBN Co to supply NBN Services (including any supply to Telstra in its role as a retail service provider), those assets will, to the extent used to supply those NBN Services, be treated for the purposes of this Determination and the migration plan as forming part of the NBN Co fixed-line network and not forming part of the copper network.
- (10) For the purposes of this Determination and the migration plan, where a hybrid fibre-coaxial network service is supplied by Telstra in a rollout region using assets forming part of a hybrid fibre-coaxial network that have been transferred to NBN Co by Telstra and spectrum within such assets and which have been licensed back from NBN Co to Telstra under the Continuity Deed or the Licence Agreement:
- (a) those licensed assets (including any spectrum allocated to Telstra) will be deemed to form part of the hybrid fibre-coaxial network for the purpose of this Determination and the migration plan, to the extent that those assets are used by Telstra to supply that hybrid fibre-coaxial network service; and
 - (b) subsection 5(4) will apply in respect of the disconnection of the hybrid fibre-coaxial network service,

unless and until the last hybrid fibre-coaxial network service supplied in that rollout region using a Telstra CMTS within the hybrid fibre-coaxial network is disconnected or Migrated, at which time those licensed assets will cease to form part of a hybrid fibre-coaxial network for the purpose of this Determination and the migration plan and will be taken to form part of the NBN Co fixed-line network.

- (11) Without limitation to subsection 5(10), where any assets forming part of the hybrid fibre-coaxial network are used by NBN Co to supply NBN Services (including any supply to Telstra in its roles as a retail service provider), those assets will, to the extent used to supply those NBN Services, be treated for the purposes of this Determination and the migration plan as forming part of the NBN Co fixed-line network and not forming part of the hybrid fibre-coaxial network.

Note 1 By virtue of paragraph 46(1)(b) of the *Acts Interpretation Act 1901*, a number of expressions used in this Determination have the same meaning as in section 7 of the Act, including:

- ACCC
- carriage services
- carriage service provider
- customer cabling
- facility
- industry code
- industry standard
- internet carriage service
- service provider rule
- standard telephone service
- Telstra

Note 2 By virtue of paragraph 46(1)(b) of the *Acts Interpretation Act 1901*, a number of expressions used in this Determination have the same meaning as in Subdivision B of Division 2 of Part 33 of the Act, including:

- migration plan
- migration plan principles
- national broadband network
- NBN Co

Part 2 – Migration Plan Principles

6. Migration Plan Principles

The principles set out at sections 10 to 44 of this Determination, together with the general principles set out in section 5, are the migration plan principles.

7. Types of principles

- (1) This Determination sets out three types of migration plan principles, namely:
 - (a) general principles, which describe the overarching principles that must be met by the migration plan; and
 - (b) specific principles, which provide further specificity regarding how some of the general principles are to be given effect in the migration plan and which also describe other specific requirements that are to be given effect to in the migration plan; and
 - (c) procedural principles, which set out procedural provisions that must be included in the migration plan.

8. Compliance with the principles

- (1) For the purposes of determining whether the migration plan complies with the migration plan principles, and applying section 7 of this Determination, the migration plan will be considered against:
 - (a) the general principles; and
 - (b) the specific principles; and
 - (c) the procedural principles.
- (2) Where a specific principle or a procedural principle relates to a matter, the migration plan will be taken to comply with these migration plan principles, including the general principles, in respect of that matter if and to the extent that the migration plan complies with that specific principle or procedural principle.
- (3) For the avoidance of doubt, notwithstanding any reference in a provision of this Determination to the independent telecommunications adjudicator, nothing in this Determination requires:
 - (a) the structural separation undertaking; or
 - (b) the migration plan;to provide for the operation of the independent telecommunications adjudicator.

9. Commencement of MTM variations

The migration plan may provide that all or any part of the MTM variations come into operation only on the Restatement Date.

Part 3 – General principles and specific principles

Division 1: General and Specific principles - disconnection of carriage services

10. General and Specific principles

- (1) The migration plan must provide for disconnection of fixed-line carriage services supplied to premises in a rollout region to occur in a way that:
 - (a) ensures the efficient and timely disconnection of wholesale carriage services and retail fixed-line carriage services from a separating network; and
 - (b) to the extent it is in Telstra's control, minimises disruption to the supply of fixed-line carriage services; and
 - (c) to the greatest extent practicable, gives a wholesale customer autonomy over decisions about:
 - (i) the timing of disconnection from a separating network;
 - (ii) except where subsection 10(1)(c)(iii) applies, minimising disruption of services associated with Migration where the wholesale customer that supplies the copper services is also the retail service provider that is supplying the end user with the NBN based services; and
 - (iii) in the case of any premises where the connection of NBN based services to the premises does not involve the use of the same physical network infrastructure as the existing carriage service supplied to that premises - allowing the sequencing of disconnection from the separating network with the connection to the NBN Co fixed-line network to enable the wholesale customer to minimise disruption to the supply of services to end users, when connecting to the NBN Co fixed-line network;
 - (d) to the greatest extent practicable, provides for wholesale services supplied by Telstra to be disconnected from that network in an equivalent manner to the disconnection of corresponding fixed-line carriage services supplied by Telstra to itself over the copper network in that rollout region, and provided that such disconnection is associated with Migration to the same NBN Co fixed-line access technology.
- (2) The migration plan must make clear that the activities undertaken by Telstra under the migration plan only form part of the end-to-end Migration process.
- (3) In providing for disconnection of retail fixed-line carriage services and wholesale services supplied to premises in a rollout region, the migration plan must specify:
 - (a) the matters in Schedule 2 to this Determination as being the responsibility of other parties (which for clarity may include Telstra otherwise than under the migration plan); and
 - (b) the matters in Schedule 3 to this Determination as being matters for which Telstra's compliance under relevant provisions of the migration plan will be dependent on the actions of other parties.

- (4) The migration plan must specify that, the matters particularised in the migration plan in accordance with subsection 10(3)(a) are or may be addressed outside of the migration plan, including (without limitation):
- (a) by retail service providers (including Telstra in its capacity as a retail service provider); or
 - (b) NBN Co under Industry Migration Arrangements.
- (5) The migration plan must specify that Telstra cannot be directed to take any action or to refrain from taking any action in respect of the matters provided for in the plan in accordance with subsection 10(3)(a) above other than to the extent expressly specified in the migration plan unless and to the extent that Telstra otherwise agrees to do so (at its discretion). For the avoidance of doubt, the matters set out in the migration plan in accordance with subsection 10(3) and Schedule 2 to this Determination remain matters covered by the migration plan for the purposes of Part XIC of the Competition Act.
- (6) The migration plan must also provide:
- (a) to the extent that there is no conflict or inconsistency with the provisions of the migration plan, nothing in the migration plan will limit any rights or obligations Telstra may have under Industry Migration Arrangements; and
 - (b) the migration plan will not limit any rights or obligations of Telstra under Part IV or Part XIB of the Competition Act (subject to any authorisation of such conduct).
- (7) The migration plan must provide that if there is any conflict or inconsistency between any of the provisions of the migration plan and:
- (a) the structural separation undertaking (other than the migration plan); or
 - (b) Industry Migration Arrangements;
- then the following order of preference will apply in determining the obligations of Telstra to the extent of the conflict or inconsistency:
- (c) the structural separation undertaking (other than the migration plan);
 - (d) the migration plan itself; and
 - (e) Industry Migration Arrangements.
- (8) The migration plan must provide for the matters in subsections 10(1)(a), (b), (c) and (d) to be met in a way which provides reasonable regulatory certainty for Telstra in connection with those activities which it is required to undertake, including by:
- (a) identifying responsibilities which are not part of Telstra's role under the migration plan in its capacity as the owner of the separating networks and in respect of which Telstra cannot be required to assume any obligations by virtue of any standard access obligation under section 152AR of the Competition Act or otherwise under terms and conditions made by the ACCC under section 152BC or 152BD of the Competition Act;

- (b) acknowledging that Telstra depends for the performance of some of its responsibilities under the migration plan on certain acts, inputs, assistance and information being undertaken or provided by third parties, so that Telstra cannot be held responsible for any failure to perform relevant obligations under the migration plan to the extent that such failure is attributable to a failure of the relevant third party in respect of the interdependency;
 - (c) specify that as soon as reasonably practicable after Telstra is notified by any person, or otherwise becomes aware, that a third party's failure in respect of an interdependency has been remedied, Telstra will promptly perform any obligation under the migration plan which is still applicable and reasonably capable of being performed, and which Telstra had been delayed from performing; and
 - (d) requiring the ACCC or independent telecommunications adjudicator to consider, prior to directing Telstra to take any action under the migration plan, together with other relevant factors, the extent to which the outcome sought could be appropriately or more efficiently achieved by another party undertaking or refraining from undertaking, any action and the extent to which it is reasonable and practical to require such other party to undertake or refrain from undertaking that action.
- (9) For the purposes of subsections 10(1)(b), (c) and (d), the migration plan must require Telstra to have in place reasonable policies and business practices relating to disconnection from a separating network which, to the maximum extent that it is reasonable and practicable for Telstra to do so, will involve the use of existing processes, operating systems and interfaces for managing and implementing the disconnection of fixed-line carriage services at premises that are passed in rollout regions.
- (10) The policies and business practices referred to in subsection 10(9) must provide for Telstra to facilitate, to the extent it is reasonably in Telstra's control to do so, the management by wholesale customers of the migration of their customers in a way that minimises:
- (a) in respect of FTTP-connected premises:
 - (i) the period of any service outage; and
 - (ii) the time taken to complete local number portability processes and any ancillary procedures;
 - (b) in respect of all other types of connected premises, the period of any service outage (other than to the extent associated with activities of NBN Co or third parties which are not contractors acting for and on behalf of Telstra).
- (11) The migration plan must provide that Telstra does not contravene any obligation under the migration plan and otherwise is not required under the migration plan to undertake any interim, temporary or other action to overcome, address or mitigate any delay or failure to the extent that it is attributable to an Excluded Event.
- (12) The migration plan must provide that, without limitation to the ACCC's functions or powers under the migration plan, Telstra:

- (a) as soon as reasonably practicable after it becomes aware that an Excluded Event has materially affected its performance under the migration plan, notifies the ACCC of the Excluded Event;
 - (b) notifies the ACCC as soon as reasonably practicable after Telstra becomes aware that the Excluded Event has been remedied or ceases to materially affect its obligations under the migration plan; and
 - (c) if requested by the ACCC, provide information to the ACCC as is reasonably necessary to demonstrate the nature of the dependency of Telstra's obligation with the Excluded Event and how it affected Telstra's performance in respect of the obligations under the migration plan.
- (13) The migration plan must also require Telstra to, as soon as reasonably practicable after Telstra is notified by any person, or otherwise becomes aware, that an Excluded Event has been remedied or has otherwise ceased to affect Telstra's obligations under the migration plan, promptly perform any obligation under the plan which is still applicable and reasonably capable of being performed, and which Telstra had been delayed or prevented from performing by virtue of the Excluded Event.
- (14) The migration plan must provide that Telstra will not be in contravention of the migration plan or be liable for any delay or failure to perform any obligation under the migration plan, if the delay or failure to perform is caused by a Force Majeure Event provided that Telstra takes all reasonably available steps to address or overcome the effects of a Force Majeure Event and until the effects of that Force Majeure Event are addressed or have been overcome, takes all reasonably available steps to mitigate the effects of the Force Majeure Event.
- (15) The migration plan must provide that, in the event a Force Majeure Event causes Telstra to delay or fail to perform its obligations under the migration plan, Telstra:
- (a) as soon as reasonably practicable after it becomes aware that a Force Majeure Event has affected its performance under the migration plan, notifies the ACCC of the Force Majeure Event and any steps which Telstra proposes to undertake to address, overcome or mitigate that effect;
 - (b) notifies the ACCC as soon as reasonably practicable after Telstra becomes aware that the Force Majeure Event has ceased to affect its obligations under the migration plan.
- (16) Subsections 10(1) and 10(2) are general principles. Every other provision of this section 10 is a specific principle.

11. Specific principle - Alignment of migration plan with Migration Assurance Policy Statement

- (1) Subject to subsection 10(3) and Schedules 2 and 3 to this Determination, the migration plan must require Telstra to, after the Migration Assurance Policy Statement (or any update) is put in place, consider the terms of the Migration Assurance Policy Statement and write to the Minister identifying those parts of the Migration Assurance Policy Statement (or relevant update to that Statement) with which Telstra agrees, and which it considers (in its discretion):
- (a) relate to Telstra's obligations under the migration plan; and

- (b) require a variation to be made to the migration plan in order to provide for consistency across the Migration Assurance Policy Statement and the migration plan.
- (2) The migration plan must provide that if Telstra writes to the Minister in accordance with the requirements provided for under subsection 11(1), it must prepare and submit to the ACCC a variation of the migration plan in a form that Telstra considers is appropriate to provide for consistency across the migration plan and those parts of the Migration Assurance Policy Statement with which it has identified and agreed.
- (3) The migration plan must also provide that if Telstra does not identify any such parts of the Migration Assurance Policy Statement or relevant update which fall within the matters specified in subsection 11(1) above and with which Telstra agrees, it is not required to write to the Minister as contemplated by the requirement under the principle set out in subsection 11(2) above.
- (4) The migration plan must provide that Telstra is not required to propose a migration plan variation by virtue of or to ensure consistency with the Migration Assurance Policy Statement, or any part of it, which Telstra has not identified in writing in accordance with subsection 11(1).

12. Specific principle - disconnection of carriage services using copper networks

Process for disconnection of copper networks in rollout region

- (1) The migration plan must set out the processes Telstra will use to disconnect copper services supplied to premises in a rollout region from a copper network (to the extent that the copper network is a separating network) following the region ready for service date for that rollout region.
- (2) The processes set out in the migration plan in accordance with subsection (1) must be in accordance with the principles at sections 10 and 25.
- (3) Subject to section 27, the processes set out in the migration plan in accordance with subsection (1) must not contain requirements that are inconsistent with industry arrangements for local number portability that would apply to migration to the NBN Co fixed-line network.

No-order disconnection premises

- (4) The migration plan must set out the circumstances in which Telstra will disconnect no-order disconnection premises in a rollout region from a copper network (to the extent that copper network is a separating network) on or after the disconnection date for that rollout region.
- (5) In setting out the circumstances contemplated by subsection 12(4), the migration plan must:
 - (a) specify which copper services supplied at no-order disconnection premises will be disconnected and the circumstances in which those fixed-line carriage services will be disconnected; and
 - (b) take into account any notification received from NBN Co about whether a no-order disconnection premises is an in train order premises, prior to disconnecting that premises; and

- (c) provide for the treatment of in train order premises; and
 - (d) specify the period commencing from the disconnection date within which fixed-line carriage services will be disconnected from no-order disconnection premises; and
 - (e) provide for Telstra to inform its wholesale customers of any circumstances in which services may be disconnected at no-order disconnection premises.
- (6) The period specified in accordance with subsection 12(5)(d) must not be longer than:
- (a) in the case of in train order premises —the period ending on the date that is as soon as reasonably practicable following 120 business days after the disconnection date for the relevant rollout region; or
 - (b) in the case of any other no-order disconnection premises of a type specified in the migration plan in accordance with subsection 12(7)—the maximum period specified in the migration plan for that type of no-order disconnection premises; or
 - (c) in the case of special services, MDU common area services and any premises at which Telstra is prohibited by law (other than by operation of the migration plan) from disconnecting - as otherwise specified in accordance with this Determination, and which may define any disconnection period other than by reference to the disconnection date for the relevant rollout region; or
 - (d) in all other cases—the period of 45 business days after the disconnection date for the relevant rollout region.
- (7) The migration plan may set out specified types of no-order disconnection premises for which specified maximum periods apply for the purposes of subsection 12(6)(b).
- (8) If the migration plan specifies a type of no-order disconnection premises and a maximum period for that type of no-order disconnection premises for the purposes of subsection 12(7), then the specified type of no-order disconnection premises and the specified maximum period must not be inconsistent with any arrangements for no-order disconnection premises set out in a Definitive Agreement.
- (9) The migration plan must provide that Telstra may disconnect a no-order disconnection premises after the disconnection date where:
- (a) in the case of a retail service - the retail customer has informed Telstra that the retail customer in respect of the retail service does not intend to Migrate and the premises is not an in train order premises; or
 - (b) in the case of a wholesale service - the wholesale customer has informed Telstra that the end user in respect of the carriage service supplied using the wholesale service has informed the wholesale customer that the end user does not intend to Migrate and the premises is not an in train order premises.

- (10) For the purposes of this section, a premises located in a rollout region which has reached the disconnection date for that rollout region without Telstra having received an order before the disconnection date for that rollout region from its retail customer or wholesale customer to disconnect any remaining copper services (other than special services or special service inputs) supplied to that premises from that network is a **no-order disconnection premises**.

Circumstances in which premises will not be disconnected

- (11) The migration plan must set out the circumstances (the **relevant circumstances**) in which Telstra will not, by the designated day, disconnect from the copper network a premises where, as at that day:
- (a) there are copper lines at that premises; and
 - (b) that premises is passed by the NBN Co fixed-line network.
- (12) Any circumstances set out in the migration plan in accordance with subsection 12(11) must not be inconsistent with the circumstances set out in a Definitive Agreement.

Disconnection by the designated day

- (13) The migration plan must require Telstra to disconnect from a copper network, by the designated day, all premises that are passed by the NBN Co fixed-line network other than premises to which one or more of the relevant circumstances apply.

13. Specific principle - disconnection of carriage services using hybrid fibre-coaxial networks

Process for disconnection of hybrid fibre-coaxial network in a rollout region

- (1) The migration plan must set out the process Telstra will use to disconnect fixed-line carriage services supplied to premises in a rollout region using a hybrid fibre-coaxial network (to the extent that hybrid fibre-coaxial network is a separating network) following the region ready for service date for that rollout region.

No-order disconnection premises

- (2) The migration plan must set out the circumstances in which Telstra will disconnect no-order disconnection premises in a rollout region from a hybrid fibre-coaxial network (to the extent that hybrid fibre-coaxial network is a separating network) on or after the disconnection date for that rollout region.
- (3) In setting out the circumstances contemplated by subsection 13(2), the migration plan must:
- (a) specify which hybrid fibre-coaxial network services supplied at no-order disconnection premises will be disconnected and the circumstances in which those fixed-line carriage services will be disconnected; and
 - (b) take into account any notification received from NBN Co about whether a no-order disconnection premises is an in train order premises, prior to disconnecting that premises; and
 - (c) provide for the treatment of in train order premises; and

- (d) specify the period commencing from the disconnection date within which hybrid fibre-coaxial network services will be disconnected from no-order disconnection premises.
- (4) The period specified in accordance with subsection 13(3)(d) must not be longer than:
 - (a) in the case of in train order premises - ending on the date that is as soon as reasonably practicable following the period of 120 business days after the disconnection date for the relevant rollout region; or
 - (b) in the case of MDU common area services or any premises at which Telstra is prohibited by law (other than by operation of the migration plan) from disconnecting - as otherwise specified in accordance with this Determination, and which may define any disconnection period other than by reference to the disconnection date for the relevant rollout region; or
 - (c) in the case of no-order disconnection premises of a type specified in the migration plan in accordance with subsection 13(5)—the maximum period specified in the migration plan for that type of premises; or
 - (d) in all other cases— the period of 45 business days after the disconnection date for the relevant rollout region.
 - (5) The migration plan may set out specified types of no-order disconnection premises for which specified maximum periods apply for the purposes of subsection 13(4)(c).
 - (6) If the migration plan specifies a type of no-order disconnection premises and a maximum period for that type of no-order disconnection premises for the purposes of subsection 13(5), then the specified type of no-order disconnection premises and the specified maximum period must not be inconsistent with any arrangements for no-order disconnection premises set out in a Definitive Agreement.
 - (7) For the purposes of this section, a premises located in a rollout region which has reached the disconnection date for that rollout region without Telstra having received an order before the disconnection date for that rollout region from its retail customer to disconnect any remaining hybrid fibre-coaxial network services supplied to that premises from that network is a ***no-order disconnection premises***.

Circumstances in which premises will not be disconnected

- (8) The migration plan must set out the circumstances (the ***relevant circumstances***) in which Telstra will not, by the designated day, disconnect a premises from a hybrid fibre-coaxial network where, as at that day:
 - (a) there are lines which form part of a hybrid fibre-coaxial network at that premises; and
 - (b) that premises is passed by the NBN Co fixed-line network.
- (9) Any circumstances set out in the migration plan in accordance with subsection 13(8) must not be inconsistent with the circumstances set out in the Definitive Agreements.

Disconnection by the designated day

- (10) The migration plan must require Telstra to disconnect from a hybrid fibre-coaxial network, by the designated day, all premises that are passed by the NBN Co fixed-line network other than premises to which one or more of the relevant circumstances apply.

14. Specific principle - MDU common areas and related copper services and hybrid fibre-coaxial services

- (1) The migration plan may provide specific arrangements to apply in relation to the disconnection of MDU common areas and MDU common area services, provided that in doing so the migration plan must specify that:
- (a) an MDU common area will constitute a premises under the migration plan when and only for so long as the MDU common area is notified by NBN Co to Telstra as being included in the fixed footprint list in a rollout region; and
 - (b) an MDU common area will form part of the rollout region in respect of which NBN Co has notified Telstra that the MDU common area is included in the fixed footprint list in that rollout region.
- (2) The migration plan may provide for the disconnection of premises within MDUs (whether or not including MDU common areas) as part of separate Target MDU rollout regions, in accordance with the Definitive Agreements.
- (3) Notwithstanding any of the principles in Part 3 of this Determination but subject to the remaining provisions of this section 14, the migration plan must provide, as an exception to the principles applying to disconnection under sections 12 and 13, that copper services and hybrid fibre-coaxial network services that are supplied to a premises that is an MDU common area are to be disconnected as follows:
- (a) any cessation of Telstra accepting orders as contemplated in subsection 22(3) of this Determination will apply in respect of any order for a new copper service or new hybrid fibre-coaxial network service supplied to an MDU common area in the same manner as for other premises in the same rollout region;
 - (b) the disconnection process applicable to fixed-line carriage services after the disconnection date in a rollout region will not apply to any copper service or hybrid fibre-coaxial network services supplied to an MDU common area that remains active on or after the disconnection date for the rollout region in which the MDU common area is located, provided that once a premises that is an MDU common area becomes permanently disconnected, the migration plan must comply with section 20 of this Determination in respect of that premises;
 - (c) subject to subsection 14(2)(d), Telstra will disconnect and will keep disconnected any copper services or hybrid fibre-coaxial network services supplied to an MDU common area in accordance with any disconnection orders received from an end user or a wholesale customer in respect of those services; and
 - (d) on or before the date that is the later of 24 months after the End of the Rollout Date and the date that is 20 business days after the disconnection

date for the relevant rollout region, Telstra will disconnect all MDU common areas which are:

- (i) as at the End of the Rollout Date, included in the fixed footprint list for a rollout region for which the region ready for service date has occurred (or any earlier date specified in the Definitive Agreements for the purpose of determining those MDU common areas in the rollout region); and
 - (ii) as at the End of the Rollout Date, not included in the fixed footprint list for a rollout region, but which are MDU common areas located within MDU buildings that contain a premises which as at the End of the Rollout Date is passed by the NBN Co fixed-line network and which is in a rollout region for which the region ready for service date has occurred (or any earlier date specified in the Definitive Agreements for this purpose).
- (4) The migration plan must specify the circumstances in which Telstra may continue to accept new orders for, and will continue to supply, special services and special service inputs at MDU common areas in accordance with section 18 of this Determination, including where applicable:
- (a) after the date by which any other copper services at an MDU common area are required to be disconnected; and
 - (b) after the designated day as provided for under section 13 of this Determination.
- (5) For the purposes of the circumstances required to be set out in the migration plan in accordance with subsection 14(4), on and from the disconnection date applicable to the relevant class of special service, any special services or special service inputs within that class which are supplied to an MDU common area will be treated as copper services (which are not special services or special service inputs) for the purpose of disconnection under the migration plan, and the disconnection of those services from that time will be managed accordingly.

15. Specific principle - coordination of connection and disconnection

- (1) The migration plan must set out how Telstra will give a wholesale customer autonomy in relation to decisions about disconnection of copper services supplied to premises (other than no-order disconnection premises) in a rollout region where the connection of the NBN Service to the premises does not involve the use of the same physical network infrastructure as the existing copper service supplied to that premises to allow the wholesale customer to coordinate with NBN Co to minimise the period of any service outage between the disconnection of copper services and the connection at the premises of NBN Services being undertaken by or on behalf of NBN Co.
- (2) The migration plan must require that, if:
 - (a) Telstra disconnects a fixed-line carriage service supplied to a premises over a copper network on request of a retail customer or, in relation to any copper service at an FTTB-connected premises or an FTTN connected premises, as a result of jumpering undertaken by (or on behalf of) NBN Co in relation to the relevant copper line or copper sub-loop; and

- (b) that disconnection affects a wholesale customer supplying fixed-line carriage services to that premises using the same copper line,

Telstra must notify the wholesale customer of the disconnection. That notification will be made in accordance with any applicable Standard Industry Process or Industry Migration Arrangement as in force from time to time (if any).

- (3) To the extent that the migration plan sets out the requirement for Telstra to use a Standard Industry Process, the migration plan must specify that in doing so, nothing requires Telstra to vary the migration plan in a manner that would require it to undertake activities under the migration plan:
 - (a) involving any matter that falls outside its role or responsibilities as set out in Schedule 2 to this Determination; or
 - (b) to remedy a failure by a third party with respect to a matter listed in Schedule 3 to this Determination.
- (4) The migration plan must require that, if:
 - (a) Telstra disconnects a fixed-line carriage service supplied to a premises over a copper network on request of a wholesale customer or otherwise disconnects any copper service at an FTTB-connected premises or an FTTN-connected premises as a result of jumpering undertaken by (or on behalf of) NBN Co in relation to the relevant copper line or copper sub-loop; and
 - (b) that disconnection affects a second wholesale customer supplying fixed-line carriage services to that premises using the same copper line,

Telstra must notify the second wholesale customer of the disconnection. That notification will be made in accordance with any applicable Standard Industry Process or Industry Migration Arrangement as in force from time to time (if any).
- (5) In this section, ***no-order disconnection premises*** has the same meaning as in section 12.

16. Specific principle - coordination of connection and disconnection for all premises

- (1) The migration plan must require that, where Telstra supplies only a standard telephone service over a copper network to a retail customer at a premises in a rollout region, Telstra must notify its retail customer that if Telstra disconnects the standard telephone service in response to a request from the retail customer or as a result of jumpering undertaken by (or on behalf of) NBN Co in relation to a copper loop or copper sub-loop in the course of connecting the premises to the NBN Co fixed-line network, any other fixed-line carriage service supplied using the same copper line or copper sub loop, whether by Telstra or a wholesale customer, will also be disconnected without further notice.
- (2) The migration plan must provide that, except to the extent required in relation to:
 - (a) notifications associated with pull through activities as contemplated in subsection 28(1)(a); and
 - (b) any obligation to continue to provide call diversion functionality as part of the supply by Telstra on the wholesale line rental service,

nothing in the migration plan is to make Telstra responsible, directly or indirectly, for coordinating or managing with NBN Co, the wholesale customer or any third party any aspect of the process of connection to the NBN Co fixed-line network, except at Telstra's discretion and where it occurs on commercially agreed terms.

17. Specific principle - restrictions on the supply of carriage services prior to and after the disconnection date

- (1) The migration plan must specify the process by which Telstra develops, and notifies wholesale customers of, any reasonable circumstances in which Telstra proposes to restrict the processing of transactions for retail customers or wholesale customers (including the rejection of, or failure to process, requests from such customers) in relation to the supply of fixed-line carriage services using a separating network in a rollout region immediately prior to the disconnection date **(order stability period)**
- (2) Any restrictions proposed in the migration plan regarding the processing of customer transactions as part of an order stability period under subsection 17(1) must be:
 - (a) in accordance with the principles at sections 10 and 25; and
 - (b) to the greatest extent practicable, apply to orders from wholesale customers to the same extent and in the same way as they apply to retail orders of the same type; and
 - (c) imposed for the shortest period reasonably required.
- (3) The migration plan must specify that Telstra is not required to provide prior notification to the ACCC of a change in any order stability period under subsection 17(1), provided that:
 - (a) the change would have the direct effect of either:
 - (i) reducing the duration of the relevant period; or
 - (ii) reducing the number or type of orders subject to the restrictions; and
 - (b) if the change affects copper services, the change applies on an equivalent basis as between retail customers and wholesale customers.
- (4) The migration plan must require Telstra to review any restrictions imposed under subsection 17(1) with a view to determining whether the restrictions require adjustment with the benefit of operational experience in the migration process in each of the following circumstances:
 - (a) where Telstra is requested to do so by the ACCC;
 - (b) where Telstra is requested to do so by the independent telecommunications adjudicator; or
 - (c) where Telstra is requested to do so by a wholesale customer, and that request is reasonable.
- (5) The migration plan must require Telstra, in conducting any review contemplated by subsection 17(4), to consult the ACCC or independent telecommunications

adjudicator (as the case may be), NBN Co, wholesale customers and any relevant NBN working group of Communications Alliance.

- (6) The migration plan must set out the actions that Telstra will take if, as a result of a review under subsection 17(4), Telstra determines that the restrictions imposed under subsection 17(1) require adjustment.

Note: The principle at section 40 requires that the migration plan include a dispute resolution process to apply to a dispute between Telstra and a wholesale customer.

18. Specific principle - special services

- (1) The migration plan must set out when Telstra intends to disconnect special services from a separating network in accordance with the principles at sections 10 and 22.
- (2) The migration plan must set out, in accordance with the principles at sections 10 and 22, when Telstra intends to disconnect from a separating network specific wholesale services (**special service inputs**) supplied to its wholesale customers in a rollout region using a separating network which are used by those wholesale customers to supply services at premises in that rollout region that are substantially similar to relevant special services.
- (3) The migration plan must establish a process, in accordance with the general principle at section 25, to allow a wholesale customer of Telstra to nominate wholesale services that are used by that wholesale customer as a special service input for the purpose of subsection 18(2).
- (4) The migration plan must provide that Telstra, on the request of either the ACCC or the Commonwealth, will notify that party of any special service inputs identified as a result of that process.
- (5) The migration plan must provide that Telstra will have a process for building a copper path at premises which had previously been permanently disconnected, in order to supply a special service or special service input to that premises. The migration plan must provide for the process to be developed in accordance with the process referred to in section 28.
- (6) The migration plan must provide that Telstra will develop a process or processes which Telstra will use to manage and implement disconnection of each class of special services and special service inputs. The migration plan must specify that each such process must be developed in accordance with the process referred to in section 28 and the disconnection date for each class of special service will be as determined in accordance with that process or processes.
- (7) In this section, relevant special services means the special services described at item 1 of Schedule 1 to this Determination.

19. Specific principle - applying a soft dial tone service

- (1) The migration plan must require that:
- (a) Telstra will apply a soft dial tone service to each active wholesale line rental or retail line rental service at a premises within the final fixed footprint list in a rollout region, where practicable, within 15 business days after the disconnection date for that rollout region, except where:

- (i) the premises is an in train order premises; or
 - (ii) the premises is an Affected Premises; or
 - (iii) the premises is an MDU common area.
- (b) Telstra will remove any soft dial tone service applied to a copper service supplied to premises within the final fixed footprint list in a rollout region after the disconnection date for that rollout region on the date which is the earlier of:
- (i) the date that Telstra restores the copper service at an in-train order premises as contemplated by section 20;
 - (ii) the date that Telstra disconnects the copper service in accordance with section 12,

and in any event by no later than 45 business days following the disconnection date for the rollout region.

- (c) The migration plan must specify that Telstra is not required to apply a soft dial tone service to a premises within the fixed footprint list in a rollout region as at the region ready for service date for that rollout region, if that premises does not have an active copper service supplied to it at that date.

20. Specific principle - restoration of carriage services

- (1) The migration plan must specify the circumstances in which Telstra may restore fixed-line carriage services over a separating network to premises in a rollout region.
- (2) For the purposes of subsection 20(1), the migration plan must provide for the equivalent treatment of wholesale services to corresponding Telstra retail carriage services in the implementation of any restoration processes over the copper network.
- (3) The migration plan must specify when Telstra must disconnect those fixed-line carriage services, if any, that it has restored over a separating network as provided in subsection 20(1).
- (4) The migration plan must specify that Telstra is permitted to restore fixed-line carriage services where such services were originally not required to be disconnected under the migration plan, and provided that such a requirement:
 - (a) is applied on an equivalent basis as between fixed-line carriage services supplied to retail customers and wholesale customers in the same circumstances; and
 - (b) is not inconsistent with any contractual obligations in respect of disconnection or reactivation of any type of carriage service as set out in the Definitive Agreements.

21. Specific principle - equipment of wholesale customers

The migration plan must set out a fair and practical process to be used by a wholesale customer, following disconnection of copper lines over which wholesale services were

supplied to that wholesale customer in a rollout region, to access Telstra's facilities in that rollout region to remove any equipment belonging to that wholesale customer.

Division 2: Specific principles - Timetable for disconnecting fixed-line carriage services

22. Specific principle

- (1) The migration plan must provide for Telstra to publish a schedule that sets out for each service continuity region and each rollout region for which a region ready for service date has been notified to Telstra by NBN Co:
 - (a) the forecast ready for service date and region ready for service date as applicable; and
 - (b) the date from which Telstra will cease accepting new orders for the supply of fixed-line carriage services; and
 - (c) the date of commencement of any order stability period; and
 - (d) the disconnection date.
- (2) The migration plan must provide for Telstra to update the schedule under subsection 22(1) above as soon as reasonably practicable and in any event within 5 business days of:
 - (a) NBN Co notifying Telstra of a change to a forecast ready for service date or region ready for service date;
 - (b) Telstra determining any change to a date under subsection 22(1)(b) or 22(1)(c); or
 - (c) any update or modification to a disconnection date that is agreed with NBN Co or as otherwise determined under a Definitive Agreement.
- (3) The migration plan must set out that Telstra will cease accepting new orders for the supply of fixed-line carriage services to premises situated in the fixed footprint list for a rollout region after the cease sale commencement date for that rollout region and where, at the time the order or request is received by Telstra, the premises to which the order or request relates is:
 - (a) NBN Serviceable; or
 - (b) a Frustrated Premises.
- (4) The migration plan must require Telstra, as soon as reasonably practicable after the date when NBN Co commences to identify Frustrated Premises in the NBN Co service qualification system, to notify the ACCC and NBN Co of the date from which it reasonably considers it will be able to implement the requirements provided under subsection 22(3)(b) of this Determination, which must be specified to take effect on and from that notification date, unless a later date is approved in writing by the ACCC.
- (5) For the avoidance of doubt, where any of the circumstances set out in subsection 22(3)(b) applies, the migration plan must state that Telstra is not prevented or

restricted (in its discretion) from supplying a new standard telephone service at a Frustrated Premises in fulfilment of the universal service obligation.

- (6) For the purposes of the restrictions to be specified under the migration plan in accordance with the specific principles set out in subsections 22(1)(b) and 22(3), the migration plan must specify that where all of the following apply, Telstra will not apply the restrictions:
- (a) the service is copper-based and supplied by Telstra to a wholesale customer using a voice-only copper sub-loop (comprising a copper line or part of a copper line terminating at a pillar in the copper network); and
 - (b) the copper sub-loop is licensed by NBN Co to Telstra following the jumpering of the copper network to an NBN Co splitter at an NBN Co FTTN or FTTB node; and
 - (c) Telstra was supplying the wholesale customer with a ULLS immediately prior to the jumpering work referred to in subsection 22(6)(b); and
 - (d) Telstra supplies the copper carriage service in the course of supplying the wholesale customer with continued access to the voice band to supply carriage services to the same premises previously supplied the ULLS.

The migration plan must provide that the supply of the voice band will be on the same terms and conditions as applied to the supply of the ULLS to the wholesale customer immediately prior to NBN Co undertaking the jumpering.

- (7) For the purposes of the restrictions to be specified under the migration plan in accordance with the specific principles set out in subsections 22(1)(b) and 22(3) above, the migration plan must specify that Telstra will not apply the restrictions where a retail customer or the end user of a wholesale customer wishes to retain their existing telephone number in the course of Migration and:
- (a) the retail customer or the end user of a wholesale customer, has submitted an order or request (to either Telstra or the relevant wholesale customer) which requires a connection to the NBN Co fixed-line network to the relevant premises;
 - (b) connection of that copper service is reasonably required to enable the telephone number to be retained following the connection of that premises to the NBN Co fixed-line network of that premises; and
 - (c) the telephone number cannot be transferred in the course of the connection of that premises to the NBN Co fixed-line network by means of a local number portability request.
- (8) For the purposes of the restrictions to be specified under the migration plan in accordance with the specific principles set out in sections 22(1)(b) and 22(3) above, the migration plan must specify that Telstra will not apply the restrictions where all of the following circumstances are met:
- (a) Telstra is supplying a new copper service or hybrid fibre-coaxial service or restoring a copper service or hybrid fibre-coaxial service within the fixed footprint list in a rollout region during the 6 months immediately before the disconnection date for that rollout region:

- (b) in-place copper infrastructure or hybrid fibre-coaxial network infrastructure exists at the premises, so that no new infrastructure is required to be installed in order to supply the new copper service or hybrid fibre-coaxial service or to restore the copper service or hybrid fibre-coaxial service;
 - (c) the copper service or hybrid fibre-coaxial service is being supplied by Telstra on a transitional basis, where Telstra has been notified by NBN Co or the relevant retail service provider (or otherwise in accordance with any Industry Migration Arrangements) that:
 - (i) an order has been placed for an NBN Service at the premises; and
 - (ii) due to an error in service classification by NBN Co that failed to correctly classify the premises as not NBN Serviceable, the connection of that premises to the NBN Co fixed-line network associated with that order is unlikely to be completed within 15 business days of the date on which NBN Co receives the order.
- (9) The migration plan may specify that the restrictions to be applied under the migration plan in accordance with the specific principles set out in subsections 22(1)(b) and 22(3) above do not apply to orders or requests for the supply of new copper services or hybrid fibre-coaxial services by Telstra:
- (a) prior to the cease sale commencement date; or
 - (b) in respect of special services, for so long as they remain special services.

23. Specific principle - control of disconnection timing and processes

The migration plan must set out:

- (a) reasonable steps that a wholesale customer may take in order to control the timing of the disconnection by Telstra of wholesale services in a rollout region following the region ready for service date and before the disconnection date for that rollout region; and
- (b) any known circumstances where a wholesale customer may not be able to take those steps which must include (but not be limited to) the circumstances where the supply of an NBN Service to the premises results in the disconnection when NBN Co removes a jumper and replaces it with a new jumper in the course of Migrating an FTTN-connected premises or FTTB-connected premises to the NBN Co fixed-line network.

24. Specific principle - provision of information regarding disconnection

- (1) The migration plan must set out minimum requirements for Telstra to notify wholesale customers that Telstra supplies with wholesale services at premises in a rollout region of the following matters relating to disconnection of that separating network:
 - (a) the disconnection date for the rollout region;
 - (b) the impending disconnection of carriage services of those wholesale customers at those premises.
- (2) Without limitation to subsection 24(1), the migration plan must specify the following:

- (a) Telstra will use all reasonable endeavours to communicate in a timely and effective manner with its retail customers about the disconnection schedule;
 - (b) an acknowledgement by Telstra that it has a significant number of and diverse retail customers, and consequently Telstra has in place a number of communication policies and business practices which it uses to keep its retail customers informed about relevant developments and Telstra activities, including:
 - (i) mass marketing and promotions for retail residential and business customers;
 - (ii) websites and online resources;
 - (iii) individualised communications through dedicated account managers for some government and commercial customers;
 - (iv) Telstra outbound call centres and inbound help desk facilities; and
 - (v) information and updates included for retail customers with or as part of their periodic billing process.
 - (c) Telstra will take into account the number and diversity of retail customers and will use all reasonable endeavours, including adopting appropriate and effective communication approaches for different types of retail customer, to ensure that its retail customers in a rollout region are made aware in a timely manner of impending disconnection dates for that rollout region.
- (3) The matters set out in the migration plan in accordance with subsections 24(1) and 24(2) must ensure that Telstra notifies its retail customers and wholesale customers of the disconnection dates for rollout regions in accordance with the principles at sections 10 and 25.
 - (4) Without limiting subsection 24(2), the migration plan must require that, where Telstra continues to supply a retail customer in a rollout region with fixed-line carriage services over a separating network four months before the disconnection date for that rollout region, Telstra must notify that retail customer of the impending disconnection of fixed-line carriage services from that separating network no less than three months before the disconnection date for that rollout region (whether or not Telstra has already provided notification of disconnection to that retail customer).

Division 3: General and specific principles - equivalence regarding disconnecting Telstra retail business units and wholesale customers using the copper network

25. General principle

The migration plan must provide for the equivalent treatment of wholesale customers and retail business units in the implementation of the processes for disconnecting wholesale services and corresponding fixed-line carriage services supplied by Telstra to itself from the copper network at premises in each rollout region, acknowledging that separate processes may be associated with the Migration of those corresponding retail and wholesale services to each of the different types of access technology.

26. Specific principle - prohibition of marketing activity

- (1) The migration plan must specify that, where an agent or employee of Telstra is required to attend a premises in a rollout region for the purpose of:
 - (a) connecting a retail customer to a fixed-line carriage service provided over the NBN Co fixed-line network, where that carriage service is not, or is not to be, supplied to that retail customer by Telstra; or
 - (b) disconnecting an end user of a wholesale customer from a separating network;the agent or employee is prohibited from undertaking any marketing activity.
- (2) Subsection 26(1) does not apply to a particular marketing activity engaged in by an agent or employee of Telstra if:
 - (a) the marketing activity relates to the provision of services under the universal service obligation; and
 - (b) the Commonwealth has requested Telstra to conduct the marketing activity.
- (3) Subsection 26(1) does not apply to prevent or limit a marketing activity engaged in by an agent or employee of Telstra if the agent or employee is attending on site at premises in order to disconnect a retail fixed-line carriage service supplied by Telstra, except where the personnel are attending a premises for or on behalf of NBN Co (in which case subsection 26(4) applies).
- (4) The migration plan must specify that, where an agent or employee of Telstra is required to attend a premises on behalf of NBN Co under subsection 26(1), the agent or employee is prohibited from undertaking any marketing activity.

Division 4: General principle and Specific Principles - use of adequate processes

27. General and Specific principles

- (1) The migration plan must require Telstra to work in good faith with other industry participants to ensure that:
 - (a) the processes for disconnecting fixed-line carriage services from a separating network at premises in rollout regions; and
 - (b) local number portability processes;facilitate Migration in a way that is consistent with the principles at sections 10 and 25.
- (2) The migration plan must require Telstra, to the extent that it is reasonable and practicable to do so, to use existing processes for implementing and managing disconnection (including existing local number portability processes) unless and to the extent that the ACCC or the independent telecommunications adjudicator determines that:

- (a) an existing process is inconsistent with the principles at sections 10 and 25; and
 - (b) it is reasonable and practicable for Telstra to amend, vary or modify the existing process, to the extent to which the existing process is within Telstra's control having regard to:
 - (i) the costs to Telstra involved in taking that action. In assessing those costs, the migration plan must specify that the relevant decision maker must have regard to costs of Telstra modifying or replacing any existing process or establishing any new or modified process within and outside the fixed footprint list for any rollout region where it would be inefficient for Telstra to operate different processes within the fixed footprint list and outside the fixed footprint list; and
 - (ii) the effectiveness of that action; and
 - (iii) the consequences of not taking that action and continuing to rely on the existing processes.
 - (iv) without limiting the other factors that may be taken into account, the extent to which the outcome which is sought could be appropriately achieved by another party undertaking, or refraining from undertaking, any action and the extent to which it is reasonable and practical to require such other party to undertake or refrain from undertaking that action. In considering what is appropriate for the purposes of this subsection, the migration plan must specify that the ACCC is required to consider, together with other relevant factors, the extent to which the outcome which is sought could be achieved at lower cost by another party undertaking, or refraining from undertaking, any action and the extent to which it is reasonable and practical to require such other party to undertake or refrain from undertaking that action.
- (3) The migration plan must provide that, where the ACCC or the independent telecommunications adjudicator determines that subsections 27(2)(a) and 27(2)(b) apply, the ACCC or the independent telecommunications adjudicator, as the case may be, may issue a direction to Telstra setting out the nature of the inconsistency and directing Telstra to amend, vary or modify the existing process (but only to the extent to which Telstra is responsible for that process) in order to ensure the process for managing disconnection is consistent with the principles at sections 10 and 25.
- (4) The migration plan must specify that where Telstra proposes a variation to this migration plan to give effect to a variation of an existing process, including in response to a determination by the ACCC or the independent telecommunications adjudicator, in order to keep the migration plan aligned with a Standard Industry Process, then notwithstanding that the ACCC has accepted the relevant variation, it will not take effect unless and until the relevant Standard Industry Process, or any change to a Standard Industry Process, comes into force, including by virtue of:
- (a) a registered industry code or industry standard established under Part 6 of the Act;

- (b) a service provider rule; or
 - (c) any other binding legal or regulatory requirement.
- (5) The migration plan must provide that any determination under subsection 27(3), and any disconnection measures, must not require Telstra to undertake activities under the migration plan:
- (a) that are inconsistent with those activities which are not its responsibility, as set out in Schedule 2 to this Determination; and
 - (b) that would require it to mitigate any act or omission of a third party on which it is dependent, as set out in Schedule 3 to this Determination,
- except and to the extent otherwise agreed by Telstra (at its discretion).
- (6) Subsection 27(1) is a general principle. Every other provision of this section 27 is a specific principle.

28. Specific Principle- Required Measures and replacement schedules

- (1) The migration plan must incorporate the required measures described below, in each case incorporating any amendments subsequently approved by the ACCC:
- (a) the required measures approved by the ACCC on 21 May 2014 in respect of the processes for Telstra to obtain relevant consents and releases from wholesale customers and provide relevant notices to wholesale customers associated with NBN Co pull-through activities;
 - (b) the required measure approved by the ACCC on 25 September 2013 in respect of the process for managed disconnection of copper carriage services (which are not special services) on the disconnection date;
 - (c) the required measure approved by the ACCC on 25 September 2013 in relation to the process for managed disconnection of hybrid fibre-coaxial network services;
 - (d) the required measure approved by the ACCC on 25 September 2013 in relation to the process for Telstra to build copper paths at premises which had previously been permanently disconnected, in order to supply special services and special service inputs.
- (2) The migration plan must set out a process, and associated timetable, under which Telstra will provide the ACCC with prior written notice of, and an opportunity for the ACCC to disallow, new or replacement schedules in respect of the following:
- (a) any replacement to the required measures listed in subsection 28(1) above, including where this is required to include amendments to reflect the Commonwealth's decision to deploy the NBN Co fixed-line network using a combination of fixed network access technologies;
 - (b) to incorporate processes associated with the disconnection of special services, developed in accordance with section 18; and
 - (c) to incorporate new or amended processes to revise or replace any of the measures listed in subsection 28(1), where necessary to reflect any changes to the disconnection process for copper services and hybrid fibre-

coaxial network services associated with the deployment of the NBN Co fixed-line network using a combination of access technologies and any other new or varied disconnection or related arrangements contemplated in this Determination.

- (3) The process that is required to be specified for the purposes of subsection 28(2) must include the following:
- (a) the requirement for Telstra to complete the development of new or replacement schedules under subsections 28(2)(a) and (c) for notification to the ACCC under subsection 28(2) as soon as practicable and in any event within 7 months of the date of the varied plan commencement date or such later date as agreed with the ACCC and the requirement for Telstra to complete the development of processes under subsection 28(2)(b) for special services for notification to the ACCC under subsection 28(2) as soon as practicable after NBN Co publishes a white paper for those special services in accordance with the Definitive Agreements;
 - (b) the requirement for Telstra to reasonably consult with the ACCC, NBN Co and wholesale customers in the development of any new or replacement schedule and in each case for not less than 20 business days;
 - (c) the requirement for Telstra to give the ACCC, NBN Co and wholesale customers not less than 15 business days notice that it has completed its development and consultation of a new or replacement schedule and that it intends to publish the new or replacement schedule;
 - (d) the requirement that the new or replacement schedule would not be published, or take effect, if the ACCC objected within the 15 business day period under subsection 28(3)(c), or other longer timeframe, as agreed with the ACCC (which may involve the ACCC taking advice from the independent telecommunications adjudicator);
 - (e) the requirement that, if the ACCC did not object within the specified timeframe (or other longer timeframe, as agreed with the ACCC), the new or replacement schedule would be published by Telstra and deemed to be accepted by the ACCC, following which it would take effect as part of the migration plan;
 - (f) the requirement that, if the ACCC did object, Telstra will amend and resubmit the new or replacement schedule to the ACCC within 20 business days, or such longer period as agreed with the ACCC, and otherwise in accordance with the process under subsections 28(3)(c) to 28(3)(e), taking into account the reasons provided by the ACCC for its objections;
 - (g) the requirement that once published and effective any processes included in a new or replacement schedule could be amended by Telstra applying the process in subsections 28(3)(c) to 28(3)(f), except that:
 - (i) if Telstra considers that the change may have a material and adverse commercial effect on a wholesale customer, the minimum period of consultation under subsection 28(3)(b) will be 20 business days;
 - (ii) for any other change, no consultation period under the time frame and process required to be specified in the migration plan in

accordance with subsection 28(3)(b) will apply, but Telstra will nonetheless provide 15 business days notice to the ACCC, NBN Co and wholesale customers in accordance with subsection 28(3)(c). If any objection is received during this period from the ACCC, NBN Co or one or more wholesale customers, the change will be treated in accordance with the process to be specified in the migration plan in accordance with subsection 28(3)(g)(i);

- (h) the requirement that Telstra will ensure that any new or replacement schedule is consistent with, and does not limit or restrict any obligation owed by Telstra to NBN Co under a Definitive Agreement, including in respect of any applicable disconnection timeframes;
- (i) the requirement that the migration plan specify that the development of new or replacement schedules, and any amendments to such new or replacement schedules, in accordance with the process under this section 28 would not be treated as, or require, a formal variation to the migration plan under section 577BF of the Act.

29. Specific principle - specification of disconnection processes

- (1) The migration plan must set out the processes that will be required for a wholesale customer to lodge, and for Telstra to accept, process and execute, an order from that wholesale customer for disconnection from a separating network of wholesale services supplied to that wholesale customer at premises in a rollout region.
- (2) The migration plan must specify which processes will be used by Telstra to disconnect from a separating network the wholesale services supplied to a wholesale customer at premises in a rollout region in the various types of disconnection scenarios that may arise, including (without limitation):
 - (a) the disconnection of copper services over a copper line used by more than one carriage service provider to supply fixed-line carriage services;
 - (b) the disconnection of copper services over a copper line over which only a standard telephone service is provided; and
 - (c) the disconnection of copper services arising from jumpering activities by or on behalf of NBN Co associated with a copper line or copper sub-loop used to supply those services.

30. Specific principle - modifications to existing processes and disconnection measures

- (1) The migration plan must set out how a wholesale customer of Telstra may propose to Telstra a modification to an existing process relating to copper services developed in accordance with the principle at section 27.
- (2) The migration plan must set out how a wholesale customer of Telstra may propose a modification to any disconnection measures relating to copper services developed in accordance with the principle at section 29.
- (3) The migration plan must require Telstra, where it receives a proposal under the process required to be specified in accordance with subsection 30(1) or 30(2), to

consider and consult in good faith with the wholesale customer about the proposal.

Note: The principle at section 40 requires that the migration plan include a dispute resolution arbitration process to apply to a dispute between Telstra and a wholesale customer.

Division 5: General principle - using standard Telstra operating systems, interfaces and processes

31. General principle

- (1) The migration plan must specify that Telstra must, to the extent that it is reasonable and practical to do so, use standard Telstra operating systems, interfaces and processes to receive and process orders received by Telstra from a wholesale customer for the purposes of disconnecting from a copper network wholesale services supplied to that wholesale customer at premises in a rollout region, unless the ACCC or the independent telecommunications adjudicator determines that:
 - (a) use of a standard operating system, interface or process is inconsistent with the principles at sections 10 and 25; and
 - (b) it is reasonable and practicable for Telstra to amend, vary or modify the operating system, interface or process, having regard to:
 - (i) the costs to Telstra involved in making the amendment, variation or modification. In assessing those costs, the relevant decision maker must have regard to costs of Telstra amending, varying or modifying any existing system, interface or process within and outside the fixed footprint list for any rollout region where it would be inefficient for Telstra to operate different systems, interfaces or processes within the fixed footprint list and outside the fixed footprint list; and
 - (ii) the effectiveness of that action; and
 - (iii) the consequences of not taking that action and continuing to rely on the existing processes; and
 - (iv) the extent to which the outcome which is sought could be appropriately achieved by another party undertaking, or refraining from undertaking, any action and the extent to which it is reasonable and practical to require such other party to undertake or refrain from undertaking that action. In considering what is appropriate for the purposes of this subsection, the migration plan must specify that the ACCC is required to consider, together with other relevant factors, the extent to which the outcome which is sought could be achieved at lower cost by another party undertaking, or refraining from undertaking, any action and the extent to which it is reasonable and practical to require such other party to undertake or refrain from undertaking that action.
- (2) The migration plan must provide that, where the ACCC or the independent telecommunications adjudicator determines that subsections 31(1)(a) and 31(1)(b) apply with respect to an operating system, interface or process used to

receive and process orders received by Telstra from a wholesale customer for the purposes of disconnection, the ACCC or the independent telecommunications adjudicator, as the case may be, may issue a direction to Telstra setting out the nature of their views and directing Telstra to amend, vary or modify the operating system, interface or process in order to ensure the operating system, interface or process is consistent with the principles at sections 10 and 25.

- (3) The migration plan must provide that Telstra is able to engage in business as usual conduct within the fixed footprint list, and is not required to continue to use or make available any process, interface or system which has been replaced by a new or modified one, approved and implemented as contemplated by the matters set out in this section 31.
- (4) The migration plan must provide that, subject to any contractual requirement to notify wholesale customers of changes in systems or processes, where any new or varied process, interface or system or any other variation to the migration plan approved and implemented as contemplated by the matters set out in this section 31 requires a wholesale customer to implement a modification to its own systems or its interface with Telstra's systems, Telstra is not required under the migration plan to:
 - (a) implement the existing standard process or new or varied process, interface or system in respect of that wholesale customer unless and until the necessary modification(s) have been made; or
 - (b) bear any costs incurred by a wholesale customer in making any such modification to its systems or interfaces.

Division 6: General principle - supply of information by Telstra to NBN Co

32. General principle

The migration plan must specify that Telstra will notify the ACCC in writing, from time to time, of:

- (a) the kinds of information that it will supply to NBN Co for either of the following purposes:
 - (i) the commencement of supply of NBN Services;
 - (ii) disconnecting fixed-line carriage services from a separating network at premises in a rollout region; and
- (b) the circumstances in which it will supply those kinds of information to NBN Co.

Division 7: Specific principles - protection of information

33. Specific principle - NBN Co migration information and NBN Co confidential information

- (1) The migration plan must provide that Telstra will ensure that NBN Co migration information is not used or disclosed by Telstra to gain an unfair commercial advantage over Telstra's wholesale customers.

- (2) The meaning and scope of the NBN Co migration information which is required to be addressed in the migration plan is as set out in Schedule 4 to this Determination. The migration plan must set out effective measures to ensure that the principle in subsection 33(1) is complied with, which measures are to be set out in an NBN information security plan, which the migration plan must specify is to be submitted to and approved by the ACCC in accordance with the following process:
- (a) within 60 business days of the varied plan commencement date, Telstra must develop and submit a draft NBN information security plan to the ACCC for approval;
 - (b) the ACCC may undertake a public consultation in respect of the draft NBN information security plan, provided that the ACCC may not publish any confidential information identified by Telstra in the draft NBN information security plan (or associated documentation) without the prior consent of Telstra;
 - (c) the ACCC may request the independent telecommunications adjudicator to provide the ACCC with advice in respect of the draft information security plan and if it does so, the ACCC must provide Telstra with a full copy of the independent telecommunications adjudicator's advice as soon as practicable after receiving it;
 - (d) the ACCC must within 60 business days of Telstra lodging a draft NBN information security plan:
 - (i) approve a draft NBN information security plan if the ACCC is satisfied that it complies with the principles in this Determination; or
 - (ii) otherwise refuse to approve the draft NBN information security plan if it does not comply with the principles in this Determination, and direct Telstra to resubmit the draft NBN information security plan, amended to take into account the concerns raised by the ACCC;
 - (e) within 40 business days of receiving a direction under subsection 33(3)(d) Telstra will resubmit an amended draft NBN information security plan to the ACCC for approval, in respect of which subsections 33(3)(b) to (d) will then apply recursively;
 - (f) if the ACCC seeks advice from the independent telecommunications adjudicator under subsection 33(3)(c), the 60 business day period applicable under subsection 33(3)(d) will be extended by a period equal to the time between the date that the ACCC submits a request to the independent telecommunications adjudicator and the date the ACCC receives the advice from the independent telecommunications adjudicator; and
 - (g) once approved by the ACCC, the NBN information security plan will be deemed to form part of the migration plan.
- (3) The migration plan must provide that Telstra will consult with NBN Co in the development of the draft NBN information security plan required to be developed in accordance with subsection 33(2).

- (4) The migration plan must provide that until the NBN information security plan is approved by the ACCC and comes into effect, Telstra will:
- (a) comply with the notification regime in respect of Telstra's use and disclosure of NBN Co migration information set out in the migration plan in force as at the date that this Determination is made; and
 - (b) act in a manner consistent with the principles set out in schedule 6 of the migration plan in force as at the date that this Determination is made.
- (5) The migration plan must provide that if Telstra proposes to disclose any confidential information of NBN Co for the purposes of Telstra complying with its obligations under the migration plan, in a manner which Telstra reasonably considers may breach any contractual obligation of confidence owed by Telstra to NBN Co (**NBN Co Confidential Information**), Telstra must provide prior written notice to both NBN Co and the Minister.
- (6) The migration plan must provide that Telstra will not disclose NBN Co Confidential Information if, within 10 business days of the date it issues a notice as required under the process to be specified in the migration plan in accordance with this section, it has received both of the following:
- (a) written notice from NBN Co that it objects to the disclosure of the NBN Co Confidential Information; and
 - (b) written notice from the Minister stating that the Minister does not consent, for public policy reasons, to the disclosure of the NBN Co Confidential Information.
- (7) The migration plan must set out the following examples of public policy reasons the Minister may take into account for the purposes of subsection 33(6):
- (a) the need to protect commercially sensitive information of NBN Co; and
 - (b) the benefits of ensuring that wholesale customers, retail service providers and other interested stakeholders have access to information to assist in ensuring Migration occurs in a manner that minimises disruption to the supply of services to end users.

For the avoidance of doubt, the specification of the above policy reasons in the migration plan do not limit the public policy matters the Minister may otherwise consider for such purposes and the migration plan must include a statement to this effect.

- (8) The migration plan must specify that Telstra will not contravene the migration plan, or be liable for any delay or failure to perform any obligation under the migration plan, if and to the extent that the delay or failure to perform is caused by Telstra being unable to disclose NBN Co Confidential Information under subsections 33(6) or (7).
- (9) The migration plan must specify that Telstra may disclose the NBN Co Confidential Information for the purposes of complying with its obligations under the migration plan where the Minister does not object to such proposed disclosure, as provided for in the process to be set out in the migration plan under subsection 33(6)(b).

34. Specific principle - wholesale customer information

- (1) The migration plan must provide that where:
- (a) a wholesale customer provides information to Telstra in connection with the disconnection of:
 - (i) an FTTP-connected premises; or
 - (ii) a premises in a rollout region if, and for so long as, it is proposed by NBN Co to be an FTTP-connected premises (including where such premises is notified as not being NBN Serviceable or is Frustrated); or
 - (b) Telstra otherwise obtains confidential information in respect of a wholesale customer in the course of performing any functions or processes which Telstra is required to undertake pursuant to the migration plan in respect of
 - (i) an FTTP-connected premises; or
 - (ii) a premises in a rollout region if, and for so long as, it is proposed by NBN Co to be an FTTP-connected premises (including where such premises is notified as not being NBN Serviceable or is Frustrated);

Telstra will use and disclose that information in accordance with the information security provisions in Part D and Schedule 2 of the structural separation undertaking.

- (2) The migration plan must set out that Telstra will comply with any confidentiality obligations that apply between a wholesale customer and Telstra under either:
- (i) an access agreement in place between Telstra and that wholesale customer in respect of the relevant copper services; or
 - (ii) any final access determination in place in respect of the relevant copper services,

so as to ensure that Telstra does not use or disclose information referred to in subsection 34(1) to gain or exploit an unfair commercial advantage over that wholesale customer or any other wholesale customers in a market.

Division 8: General principle - commencing to supply fixed-line carriage services using the national broadband network

35. General principle

The migration plan must require Telstra to commence to supply fixed-line carriage services to customers using the national broadband network as follows:

- (a) by following any other connection arrangements set out in NBN Co's relevant access agreement with Telstra (as based on the applicable NBN Co standard form of access agreement for the purposes of Part XIC of the Competition Act) or as otherwise agreed from time to time by Telstra and NBN Co; and

- (b) in accordance with a timetable that is determined on a region by region basis, commencing in each rollout region from the date that NBN Co notifies Telstra that NBN Co will commence accepting orders in respect of that rollout region.

Division 9: General principle and Specific Principle - no wholesale carriage services over the hybrid fibre-coaxial network

36. General principle

The migration plan must provide that Telstra is not required to supply carriage services to wholesale customers or otherwise supply wholesale carriage services using a hybrid fibre-coaxial network (to the extent that such hybrid fibre-coaxial network is a separating network).

37. Specific principles -carriage services over the hybrid fibre-coaxial network

- (1) The migration plan must provide that Telstra must not:
 - (a) accept an order to supply a hybrid fibre-coaxial service to; or
 - (b) knowingly assist a person to whom Telstra has previously supplied such a service to continue to receive supply of a hybrid fibre-coaxial service at, a premises located outside the Telstra hybrid fibre-coaxial network footprint.
- (2) The migration plan must provide that from the date of the varied migration plan, in respect of the supply of hybrid fibre-coaxial network services (whether or not such services are offered by Telstra for supply together with other carriage services) to retail customers, Telstra must:
 - (a) where Telstra supplies hybrid fibre-coaxial network services to retail customers on a fixed term basis, the fixed-term specified must not exceed 24 months duration unless Telstra is doing so in order to respond to the availability of competitive fixed term offers other than offers applicable only in respect of NBN based services, of longer than 24 months being widely available in the market;
 - (b) ensure that the terms and conditions for the supply of hybrid fibre-coaxial network services on any fixed term basis include a provision for the payment of an early termination charge that is no higher than the greater of:
 - (i) the early termination charge that would have been imposed on retail customers in equivalent circumstances under Telstra's standard contracts for the supply of hybrid fibre-coaxial services as at 3 November 2014; or
 - (ii) in the case of a fixed term contract other than a Matching Fixed Offer (as defined below) only, if greater than the amount in subsection 37(2)(b)(i), a genuine pre-estimate of the loss to Telstra reasonably likely to be incurred as a result of early termination by the retail customer (acknowledging that the loss to Telstra may reduce over the term of the contract);

- (c) continue to supply and reasonably publicise the availability to retail customers of the following three casual plan offers (**Casual Offers**) for supply hybrid fibre-coaxial network services, being to retail customers:
 - (i) Telstra Broadband 50GB Bundle;
 - (ii) Telstra Broadband 200GB Bundle; and
 - (iii) Telstra Broadband 500GB Bundle;
 - (d) continue to supply and reasonably publicise services equivalent to the services supplied under the Casual Offers on a fixed term basis (**Matching Fixed Offer**) and Telstra may modify the terms of the offers for the Casual Offers and Matching Fixed Offers provided that Telstra must comply with subsection 37(2)(e) below and in the case of the Matching Fixed Offers subsection 37(2)(b);
 - (e) ensure that the same terms and conditions apply to the Casual Offers and Matching Fixed Offers, except that the terms and conditions for supply under a Casual Offer:
 - (i) for the period up to 30 June 2017, may require payment by the retail customer of an additional fee of not greater than \$120 (such fee payable at such time and in such manner as determined by Telstra);
 - (ii) for the period from 1 July 2017 to 31 December 2017, may require payment by the retail customer of a fee in addition to that in subsection 37(2)(e)(i) of not greater than a reasonable estimate of the additional direct costs to Telstra of supplying the service not otherwise recoverable by means of an additional standard monthly payment under the Casual Offer, and which reflects that Telstra is not be able to recover those costs over a fixed contract period; and
 - (iii) may not require payment by the retail customer of any early termination or similar charge (however described) in the event that the retail customer elects, at any time, to terminate the supply of hybrid fibre-coaxial network services, but which charges may be charged in respect of the Matching Fixed Offer.
- (3) The migration plan must provide that subsections 37(2)(c), (d) and (e) do not apply in respect of either:
- (a) any fixed term offer that is not a Matching Fixed Offer; or
 - (b) any casual plan other than the three Casual Offers referred to in subsection 37(2)(c).
- (4) The migration plan must provide that the matters specified in accordance with subsection 37(2) above will cease to take effect on the following basis:
- (a) the matters addressing subsections 37(2)(a) and 37(2)(b) above will cease to take effect on and from 30 June 2018; and
 - (b) the matters addressing subsection 37(2)(e)(i) will cease to take effect on and from 30 June 2017; and

- (c) the matters addressing subsections 37(2)(c), 37(2)(d) and 37(2)(e)(ii) will cease to take effect on and from 31 December 2017; and
- (d) unless otherwise agreed by Telstra and notified in writing to the ACCC, all matters addressing subsection 37(2) above will cease to take effect:
 - (i) on 30 June 2015 in the event that by this date Telstra has not been provided by NBN Co with evidence that:
 - (A) NBN Co has entered into an agreement with Optus; or
 - (B) the Commonwealth has entered into an agreement with Optus; or
 - (C) Optus has submitted an undertaking to the ACCC under section 87B of the Competition Act which has been accepted by the ACCC,

under which, in any case, Optus has become subject to obligations substantially similar to those set out in this section 37 in relation to the Optus HFC Network, acknowledging that the current terms on which Optus offers to supply services to its retail customers over the Optus HFC Network are different to the terms on which Telstra offers hybrid fibre-coaxial network services to its retail customers; and

- (ii) at any time after 30 June 2015, in the event that the obligations contemplated in subsection 37(4)(d)(i)(A), (B) or (C), as applicable, are terminated, expire, are withdrawn or in the event of the ACCC, NBN Co or the Commonwealth, as relevant, failing to take reasonable action to enforce an obligation entered into by Optus of the type contemplated by subsection 37(4)(d)(i)(A), (B) or (C) in the event of non-compliance by Optus.

Part 4 – Procedural principles

38. Procedural principle - reporting framework

- (1) The migration plan must provide for the provision of timely and regular reporting on implementation of, and compliance with, the migration plan from Telstra to the ACCC through a planned reporting framework.
- (2) The planned reporting framework must describe a process for identifying, on an ongoing basis, whether or not the provisions of the migration plan continue to comply with the general principles.
- (3) The migration plan must provide that any reports provided to the ACCC by Telstra under a provision of the migration plan must also be provided by Telstra to the Commonwealth where the Commonwealth requests that Telstra provide such reports.
- (4) The planned reporting framework must provide the ACCC with sufficient information to monitor Telstra's compliance with, and the effectiveness of, the migration plan. The planned reporting framework must provide that the ACCC may:
 - (a) consult with wholesale customers and other stakeholders on Telstra's compliance with the migration plan; and
 - (b) for the purposes of such consultation, disclose information which Telstra provides to the ACCC under this section (other than information that is commercially confidential).

39. Procedural principle - rectification of plan as directed by the ACCC

- (1) The migration plan must provide that if the ACCC determines that the provisions of the migration plan no longer comply with the general principles, then the ACCC may issue a direction to Telstra, requiring Telstra to lodge a draft variation to the migration plan in accordance with section 577BF of the Act, which variation is intended to ensure that the migration plan is brought back into compliance with the general principles.
- (2) The migration plan must provide that any direction from the ACCC under subsection 39(1) must set out:
 - (a) those provisions of the migration plan, and where applicable the manner of their operation, that in the ACCC's view no longer comply with the general principles;
 - (b) its reasons for holding that view; and
 - (c) any steps which the ACCC reasonably considers Telstra should take, including any necessary variation to the migration plan, in order to rectify the non-compliance.
- (3) The migration plan must provide that Telstra will as soon as reasonably practicable and in any event within 40 Business Days of receiving a direction (or such longer period as permitted by the ACCC) under subsection 40(1), give the

ACCC a draft variation to the migration plan in accordance with section 577BF of the Act.

- (4) The process required to be described in the migration plan in accordance with subsection 39(1) must set out a timeframe for the provision of the draft variation, which must not be greater than 40 business days, and the draft variation must:
 - (a) take into account the matters specified by the ACCC in its direction as well as such other matters as Telstra considers are relevant (for example, any alternative steps which Telstra has identified might be adopted in order to ensure compliance); and
 - (b) ensure that the provisions of the migration plan comply with the general principles.
- (5) The migration plan must provide that:
 - (a) in assessing any draft variation submitted by Telstra, the ACCC may seek advice from the independent telecommunications adjudicator on the draft variation; and
 - (b) the ACCC will provide to Telstra a copy of any advice provided by the independent telecommunications adjudicator and will give Telstra a reasonable opportunity to comment on that advice; and
 - (c) if the ACCC in accordance with section 577BF of the Act refuses to approve a variation submitted by Telstra, the ACCC will issue a final direction to Telstra which specifies:
 - (i) any changes to the draft variation which Telstra is required to make in order for it to be approved; and
 - (ii) the reasons why those changes are required; and
 - (d) within not less than 20 business days of the date which it receives a draft direction, or such longer period as the ACCC allows, Telstra will submit a variation under section 577BF of the Act that complies with the final direction; and
 - (e) nothing in the migration plan, including as provided for under this section 39, operates to make any inconsistency or non-compliance which develops between a provision of the migration plan or the manner of its operation and the general principles a contravention by Telstra of the migration plan.
- (6) The migration plan must provide that, without limitation to the matters specified in Schedules 2 and 3 to this Determination, in making or issuing any determination, direction or order under the migration plan, the ACCC or the independent telecommunications adjudicator must have regard to:
 - (a) the costs to Telstra involved in taking the action specified. In assessing those costs, the relevant decision maker must have regard to costs of Telstra modifying or replacing any existing process or establishing any new or modified process within and outside the fixed footprint list for any rollout region where it would be inefficient for Telstra to operate different processes within the fixed footprint list and outside the fixed footprint list;

- (b) the effectiveness of the action;
 - (c) the relative costs and benefits of not taking that action, including the materiality of the consequences of continuing to rely on the existing processes; and
 - (d) the extent to which the outcome which is sought could be appropriately achieved by another party undertaking, or refraining from undertaking, any action. In considering what is appropriate under this subclause, the migration plan must specify that the ACCC must consider, together with other relevant factors, the extent to which the outcome which is sought could be achieved at lower cost by another party undertaking, or refraining from undertaking, any action and the extent to which it is reasonable and practical to require such other party to undertake or refrain from undertaking that action.
- (7) The migration plan must provide that any directions, determinations or orders by a the ACCC or the independent telecommunications adjudicator under the migration plan are subject to monetary caps as follows:
- (a) Telstra is not required to incur total costs of more than \$1,000,000 in implementing any determination which requires it to:
 - (i) modify an existing process, including in any new or replacement schedule under section 28;
 - (ii) modify any standard operating system or interface;
 - (iii) develop a new or modified disconnection measure,
 unless the relevant decision maker demonstrates in its determination that:
 - (iv) the steps required to be undertaken by Telstra to comply with the determination are the least cost solution to resolve the concern which is the subject of the determination; and
 - (v) the cost to Telstra of complying with the determination is outweighed by the relative benefits, including the materiality of the consequences of continuing to rely on existing processes or systems; and
 - (b) Telstra is not required to incur total costs of more than \$10,000,000 in any calendar year in implementing determinations made by either the ACCC or the independent telecommunications adjudicator under the migration plan. For clarity, the capacity for the ACCC and independent telecommunications adjudicator to exceed the monetary cap in subsection 39(7)(a) in relation to one or more determinations remains subject to the annual monetary cap that applies in respect of all determinations made in any year under this subsection 39(7)(b).

40. Procedural principle - dispute resolution

- (1) The migration plan must provide for an adequate dispute resolution process and mechanisms for potential disputes that may arise between Telstra and its wholesale customers under a provision of the migration plan.

- (2) The migration plan must provide for the independent telecommunications adjudicator to oversee a process to apply where a dispute arises between Telstra and a wholesale customer in relation to that wholesale customer under a provision of the migration plan.

41. Procedural principle - scope of modifications to processes

The migration plan must provide that

- (a) the ACCC; and
- (b) the independent telecommunications adjudicator;

must not make a determination under the migration plan that has the effect or likely effect of:

- (c) preventing Telstra from removing a soft dial tone service from an active copper service at a premises at the date that is the relevant date for that premises as required to be set out in the migration plan in accordance with the principle under section 19; or
- (d) preventing Telstra from disconnecting no-order disconnection premises as required to be prescribed in the migration plan in accordance with section 12 within the applicable period under subsection 12(6); or
- (e) preventing Telstra from disconnecting no-order disconnection premises as required to be prescribed in the migration plan in accordance with the principle at section 13 within the applicable period under subsection 13(4); or
- (f) preventing Telstra from disconnecting each class of special services and special service inputs on and from a disconnection date determined in accordance with section 18; or
- (g) preventing Telstra from disconnecting any other fixed-line carriage services supplied using a copper line without notice when, as requested by a retail customer, Telstra disconnects a standard telephone service supplied using that line; or
- (h) preventing Telstra from disconnecting any other fixed-line carriage services supplied using a copper line without notice when, as requested by a wholesale customer, Telstra disconnects a wholesale line rental service supplied using that line;
- (i) requiring Telstra to take action, or to refrain from taking action, that would be inconsistent with any obligations of Telstra under any Industry Migration Arrangements or Standard Industry Process;
- (j) requiring Telstra to take action under the plan in respect of any of the matters specified in Schedule 2 to this Determination;
- (k) restricting, preventing or placing conditions upon the marketing by Telstra of hybrid fibre-coaxial carriage services or which would restrict, prevent or place conditions upon Telstra's ability to use its hybrid fibre-coaxial network or to supply hybrid fibre-coaxial network services, except to the

extent specified in the plan in accordance with the principles set out in section 37 of this Determination; or

- (l) requiring Telstra to implement any new or modified information security measures, except and to the extent set out in respect of NBN Co migration information under Schedule 4 to this Determination and the NBN information security plan, or as otherwise agreed by Telstra.

42. Procedural principle - consultation with NBN Co

The migration plan must require Telstra to consult with NBN Co:

- (a) when amending, varying or modifying an existing process in accordance with subsection 27(3);
- (b) when developing or varying replacement schedules under section 28;
- (c) when developing disconnection measures in accordance with section 29;
- (d) when modifying disconnection measures in accordance with section 30;
- (e) when notifying the ACCC in accordance with section 32;
- (f) when developing or varying the NBN information security plan in accordance with section 33;
- (g) under a process for rectification set out in accordance with section 39; and
- (h) when providing written notice to the ACCC about a test procedure in accordance with section 43.

43. Procedural principle - test procedure processes

- (1) This section applies if the migration plan specifies a process (a ***test procedure process***) for Telstra to undertake development or implementation testing of a new or modified process, system, interface or disconnection measure limited to particular geographic areas, services or customers (a ***test procedure***).
- (2) The migration plan must require Telstra to give written notice to the ACCC prior to undertaking the test procedure specifying:
 - (a) what is being tested; and
 - (b) the participants in the test; and
 - (c) the duration of the test.
- (3) The migration plan must require that, if the ACCC gives Telstra notice of the ACCC's concerns with the test procedure, then:
 - (a) either:
 - (i) if Telstra has not yet commenced the test procedure—Telstra will not proceed with the test procedure; or
 - (ii) if Telstra has commenced the test procedure—Telstra will, as soon as practicable, cease the test procedure; and

- (b) if Telstra wishes to proceed with the test, Telstra must give an amended notice to the ACCC addressing its concerns with the test procedure.
- (4) The migration plan must require that, if the ACCC gives Telstra notice of the ACCC's concerns in accordance with subsection 43(3), the notice must specify:
 - (a) the nature of the concerns which the ACCC has in relation to testing;
 - (b) any further information or evidence which the ACCC reasonably requires Telstra to provide in order to satisfy itself of the appropriateness of the testing; and
 - (c) any amendment to the test procedure process, including any modification to the test procedure required in order to resolve the ACCC's concerns.
- (5) The migration plan must provide for the process set out in subsection 43(3) to be recursive, in that the ACCC may give notice to Telstra of its concerns in relation to an amended notice given to the ACCC by Telstra in accordance with subsection 43(3)(b), with the obligations set out in subsection 43(3)(a) applying equally to that later ACCC notice.

44. Procedural principle - cessation of migration plan

- (1) Subject to subsection 44(2), the migration plan must provide that the provisions of the migration plan will cease to have effect once every separating network in every rollout region has been disconnected.
- (2) The provisions set out in the migration plan to meet the requirements of subsection 33(1) must never cease to have effect.

Schedule 1: Special services

1. Specific special services

- (1) Subject to any condition specified in column 3 for that item, each of the fixed-line carriage services that is specified in an item of column 1 of Table 1 is a special service, including:
- (a) any of the products and product bundles provided by means of those fixed-line carriage services which are specified in column 2 of Table 1; and
 - (b) with the exception of the fixed-line carriage services specified at item 10 of Table 1—any other products or product bundles which are subsequently provided by means of those access services.
- (2) Each of the fixed-line carriage services that is specified in an item of column 1 of Table 2 is a special service, including:
- (a) any of the products and product bundles provided by means of those fixed-line carriage services which are specified in column 2 of Table 2; and
 - (b) any other products or product bundles which are subsequently provided by means of those access services.

Table 1 - special services (retail)

Item	Column 1 - Access Service	Column 2 - Product Bundles	Column 3 - Condition
1	<ul style="list-style-type: none"> • DDS Fastway 	<ul style="list-style-type: none"> • DDS Fastway • DDS Flexnet • DDS Local Area Service (LAS) 	—
2	<ul style="list-style-type: none"> • Frame Relay 	<ul style="list-style-type: none"> • Frame Relay • Business IP Frame Relay • Connect IP Frame Relay • GBIP (proxy) 	—
3	<ul style="list-style-type: none"> • Megalink 	<ul style="list-style-type: none"> • Megalink 	—
4	<ul style="list-style-type: none"> • CustomNet Spectrum 	<ul style="list-style-type: none"> • CustomNet Spectrum 	—

Item	Column 1 - Access Service	Column 2 - Product Bundles	Column 3 - Condition
5	<ul style="list-style-type: none"> • Ethernet Lite BDSL 	<ul style="list-style-type: none"> • Ethernet Lite • Business IP Ethernet Lite • Connect IP Ethernet Lite • GBIP (Government Broadband IP) • 1 touch video 	—
6	<ul style="list-style-type: none"> • ISDN10/20/30 	<ul style="list-style-type: none"> • ISDN10/20/30 BusinessLine • ISDN Dual Node • ISDN Diverse Access • Business Connect /2 • Business Options Connect • Business Premium Connect Corporate Connect • All-4-Biz 	—
7	<ul style="list-style-type: none"> • ISDN2 	<ul style="list-style-type: none"> • ISDN2 BusinessLine • ISDN2 Enhanced BusinessLine • ISDN Xpress • Business Connect / 2 • Business Options Connect • Business Premium Connect Corporate Connect • All-4-Biz (newly released) 	—
8	<ul style="list-style-type: none"> • DDS Low Speed 	<ul style="list-style-type: none"> • DDS Low Speed • DDS BIN (bank interchange network) 	—
9	<ul style="list-style-type: none"> • VGDL 	<ul style="list-style-type: none"> • PAPL Tie Lines Voice Links 	—
10	<ul style="list-style-type: none"> • STS / ADSL / ADSL 2+ 	<ul style="list-style-type: none"> • Remote Telemetry Telstra Secure 	The service is only a special service if supplied for Remote Telemetry or Telstra Secure
11	<ul style="list-style-type: none"> • ATM (over copper) 	<ul style="list-style-type: none"> • N/A 	—
12	<ul style="list-style-type: none"> • Payphones 	<ul style="list-style-type: none"> • N/A 	—

Table 2 - special services (wholesale)

Item	Access Service	Product Bundles
1	<ul style="list-style-type: none"> • DDS Fastway 	<ul style="list-style-type: none"> • DDS Fastway • DDS Flexnet • DDS Local Area Service (LAS)
2	<ul style="list-style-type: none"> • Data Access Radial 	<ul style="list-style-type: none"> • N/A
3	<ul style="list-style-type: none"> • Frame Relay 	<ul style="list-style-type: none"> • Frame Relay
4	<ul style="list-style-type: none"> • Megalink 	<ul style="list-style-type: none"> • N/A
5	<ul style="list-style-type: none"> • Wholesale Transmission -CRA163 - Telstra domestic tail transmission capacity service 	<ul style="list-style-type: none"> • CRA163 - Telstra domestic tail transmission capacity service
6	<ul style="list-style-type: none"> • CustomNet Spectrum 	<ul style="list-style-type: none"> • CustomNet Spectrum
7	<ul style="list-style-type: none"> • Wholesale Business DSL (W-BDSL) 	<ul style="list-style-type: none"> • Business Data Access Service (BDAS)
8	<ul style="list-style-type: none"> • ISDN10/20/30 	<ul style="list-style-type: none"> • ISDN10/20/30 BusinessLine • ISDN Dual Node
9	<ul style="list-style-type: none"> • ISDN2 	<ul style="list-style-type: none"> • ISDN2 BusinessLine • ISDN2 Enhanced BusinessLine- Currently CNRs for call rates. Basic Access as per OCT.
10	<ul style="list-style-type: none"> • DDS Low Speed 	<ul style="list-style-type: none"> • DDS Low Speed • DDS BIN
11	<ul style="list-style-type: none"> • VGDL 	<ul style="list-style-type: none"> • N/A
12	<ul style="list-style-type: none"> • Telstra Traffic Light Service 	<ul style="list-style-type: none"> • N/A
13	<ul style="list-style-type: none"> • Wholesale ATM (over copper) 	<ul style="list-style-type: none"> • N/A
14	<ul style="list-style-type: none"> • ATM (Rebill) (over copper) 	<ul style="list-style-type: none"> • N/A
15	<ul style="list-style-type: none"> • Customer-operated payphones 	<ul style="list-style-type: none"> • N/A

2. Contracted services

Those fixed-line carriage services Telstra is required to provide over a separating network, until not later than 8 April 2017, under a limited number of Telstra retail contracts entered into before the date of this Determination and which contracts are identified in accordance with a Definitive Agreement, are special services.

Schedule 2: Matters outside of Telstra's responsibility under the Migration Plan

For the purposes of this Determination, the following matters are specified as matters outside of Telstra's responsibilities under the migration plan:

- (a) the provision of information or notifications about the NBN Co fixed-line network rollout and Migration and/or its implications for end users, including any:
 - (i) publication of network and service readiness information, including any information concerning the fixed footprint list for any rollout region;
 - (ii) the likely effect of Migration on any existing end user equipment or services, including any services supplied by other carriage service providers and/or other third parties (for example, medical alert services, security alarms, lift phones, fire alarms, automatic teller machines, EFTPOS terminals);
 - (iii) provision or publication of information to end users about the operation of cease sale, order stability arrangements or other Migration-related changes to existing copper services and hybrid fibre-coaxial network services;
- (b) the identification of fixed-line carriage services (or types of fixed-line carriage services) supplied by Telstra or its wholesale customers over the copper network which may need to be transferred, modified, withdrawn or terminated, because those carriage services cause, or may cause, interference or other performance issues for NBN Services or NBN based services;
- (c) the development of products to be supplied on or over the NBN Co fixed-line network that support the Migration;
- (d) the design of the NBN Co fixed-line network, including the location of infrastructure and choice of access technology used to supply NBN Services to premises;
- (e) the timing of the rollout of the NBN Co fixed-line network;
- (f) network activities undertaken (either before or after a particular region ready for service date) associated with making a rollout region ready for the supply of services using the NBN Co fixed-line network and/or Migration, including notifying retail service providers of the date and likely duration of and the completion of any work associated with the NBN Co fixed-line network which could interrupt fixed-line carriage services;
- (g) the achievement of network serviceability using the NBN Co fixed-line network for premises within the fixed footprint list in a rollout region;
- (h) the maintenance of any list or register of equipment or services which are or may be incompatible with a service supplied using the NBN Co fixed-line network, including without limitation equipment used by or in connection

with services supplied by other carriage service providers and/or third parties; and

- (i) the provision of a connection to the NBN Co fixed-line network at premises within the fixed footprint list in a rollout region, including dealing with the relevant retail service provider and/or NBN Co in respect of any delay associated with service connection;
- (j) the management of end users within the fixed footprint list in a rollout region, including:
 - (i) at premises at which a pull-through has occurred or may occur;
 - (ii) at premises at which fixed-line carriage services are to be or have been disconnected;
 - (iii) where an end user is experiencing unavailability or delay in relation to the connection of a premises to, or in the supply of a carriage service using, the NBN Co fixed-line network; or
 - (iv) at or following disconnection of fixed-line carriage services at premises and irrespective of whether or not a premises is NBN Serviceable;
- (k) making available any interim carriage services (other than call diversion functionality as part of the supply by Telstra of the wholesale line rental service as contemplated by section 16(2) of this Determination);
- (l) the management of, or service assurance for, end users in relation to any services supplied by other carriage service providers and/or third parties (for example, medical alert services, security alarms, lift phones, fire alarms, automatic teller machines, EFTPOS terminals etc) impacted by Migration, except and to the extent this involves reconnection of an existing fixed line copper carriage service as contemplated by section 20 of the Determination;
- (m) in-home wiring or other activities on the customer side of the network termination point that would otherwise be necessary to connect a premises to the NBN Co fixed-line network;
- (n) the provision or installation of any new or upgraded modems, filters, or other customer premises equipment required in order for an end user to obtain services on the NBN Co fixed-line network; and
- (o) the testing of products developed by NBN Co, retail service providers or third parties to determine their suitability as replacements for existing fixed-line carriage services.

Schedule 3: Matters for which Telstra's compliance is dependent on the actions of other parties

For the purposes of this Determination, the following matters are specified as matters for which Telstra's compliance under the migration plan will be dependent on the actions of other parties:

- (a) the publication by Telstra of any schedule of disconnection dates may be made subject to it being provided with subscriber address information by NBN Co (including, without limitation, forecast ready for service dates and region ready for service dates) in accordance with the terms of the Definitive Agreements;
- (b) the provision of notifications by Telstra to retail customers and wholesale customers in a rollout region will be based on the then current list of premises to be disconnected (together with any update to the list), which NBN Co provides to Telstra, in each case, made available to Telstra prior to Telstra giving the relevant notice;
- (c) the extent of Telstra's obligations under the migration plan, including in relation to disconnection and related matters (such as the cessation of supply of Copper Services) where they apply to premises in a rollout region, will be determined based on the then current list of premises which NBN Co provides to Telstra specifying the fixed footprint list for the relevant rollout region (together with any update to the list);
- (d) Telstra's obligations under certain provisions of the migration plan may be subject to other parties, including the gaining and/or losing carriage service provider, complying with any generally accepted industry arrangements governing the active transfer of services (including any relevant port or churn processes) in the course of Migration;
- (e) Telstra's ability to continue to supply a special service or special service input after the relevant disconnection date for a rollout region and/or the service quality or capability of a special service or special service input may be dependent on:
 - (i) a wholesale customer providing accurate, complete and timely information to Telstra in respect of special services or special services inputs; and
 - (ii) in the case of FTTN-connected premises, NBN Co making available to Telstra a relevant copper line or copper sub-loop;
 - (iii) the actions of NBN Co and/or the operating characteristics of the NBN Co fixed-line network, including any interference caused by the NBN Co fixed-line network with the supply of the special service or special service input.
- (f) Telstra's ability to supply fixed-line carriage services may be subject to interruption, disconnection or degradation caused by the actions by or on behalf of NBN Co or a contractor of NBN Co (excluding Telstra) and/or the operating characteristics of the NBN Co fixed-line network, including any interference caused by the NBN Co fixed-line network;

- (g) the application by Telstra of order restrictions or limitations (as specified under the migration plan) will only be applied to those premises identified as being affected by virtue of being included in the then current list of premises (including any updated list) which NBN Co provides to Telstra specifying the fixed footprint list for the relevant rollout region immediately prior to Telstra putting in place the relevant restrictions or limitations; and
- (h) where the migration plan applies to, or provides for, particular action to be taken with respect to a premises depending on whether it is a FTTP-connected premises, a HFC-connected premises, an FTTB-connected premises or a FTTN-connected premises, Telstra will act based on how the premises is classified in NBN Co's service qualification system at the time Telstra makes its decision about the relevant action.

Schedule 4: NBN Co migration information

For the purposes of the migration plan, including under subsection 33(2) of this Determination, NBN Co migration information means:

- (a) any document, materials, data, or tangible item, or any information in some other form, which is disclosed by or on behalf of NBN Co to Telstra in accordance with a Definitive Agreement and for the purposes of:
 - (i) the connection by NBN Co or its personnel of premises and commencement of supply of NBN Co Services to:
 - (A) an FTTP-connected premises; or
 - (B) a premises in a rollout region if, and for so long as, it is proposed by NBN Co to be an FTTP-connected premises (including where such premises is notified as not being NBN Serviceable or is Frustrated); or
 - (ii) disconnecting carriage services from a separating network at:
 - (A) an FTTP-connected premises; or
 - (B) a premises in a rollout region if, and for so long as, it is proposed by NBN Co to be an FTTP-connected premises (including where such premises is notified as not being NBN Serviceable or is Frustrated); and
- (b) other information in relation to FTTN-connected premises, FTTB-connected premises or HFC-connected premises (or premises connected to the NBN by any other access technology, except for FTTP) which Telstra agrees to treat as NBN Co migration information from time to time provided that Telstra has promptly notified the ACCC of:
 - (i) the type of information which has been agreed to be treated as NBN Co migration information; and
 - (ii) any conditions, limitations or modifications that Telstra has agreed with NBN Co to apply to the application of the plan to such information;

but does not include:
- (c) any information which is, or comes into, the public domain other than through an act or omission of Telstra or any of its related entities or personnel;
- (d) any information which NBN Co has made available to service providers or infrastructure providers generally;
- (e) any information which has been made available to Telstra by NBN Co under an agreement which is not a Definitive Agreement;

- (f) any information which was made available to Telstra by a person (other than NBN Co) who is not or was not then under an obligation of confidence to NBN Co in relation to that information;
- (g) any information which is or was developed by Telstra independently of NBN Co;
- (h) any information to the extent that Telstra is required by law to disclose that information (and then only to the extent it is required to do so);
- (i) any information received from or on behalf of NBN Co in relation to any payment by NBN Co of any amount to Telstra in connection with the disconnection of a separating network;
- (j) any information received from or on behalf of NBN Co in relation to any payment to Telstra for access to Telstra infrastructure or related services in connection with the build of the NBN Co fixed-line network; and
- (k) information provided or exchanged solely in relation to the administration of the Definitive Agreements, including administration of claims and indemnities, unless such information is otherwise specified in the migration plan.