

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Broadband, Communications
and the Digital Economy

Telecommunications Act 1997

Telecommunications (Migration Plan Principles) Determination 2011

Authority

Subsection 577BB(1) of the *Telecommunications Act 1997* (the Act) provides that the Minister may determine that specified principles are migration plan principles for the purposes of the Act.

Purpose

Subsection 577A(1) of the Act allows the Australian Competition and Consumer Commission (ACCC) to accept a written undertaking by Telstra regarding structural separation (Telstra's SSU). Structural separation is regarded, under paragraph 577A(1)(a), as Telstra, at all times after the designated day, ceasing to supply fixed-line carriage services to retail customers in Australia using a telecommunications network over which Telstra is in a position to exercise control. Under subsection 577A(10) of the Act, the term 'designated day' refers to either 1 July 2018, or another day specified by the Minister.

Paragraph 577A(1)(b) of the Act provides that Telstra's SSU can set out specified action that Telstra will take in connection with its structural separation. Subsection 577BC(1) provides that the specified action can include giving the ACCC a draft migration plan.

The requirements of a draft migration plan are set out at subsection 577BC(2). It must specify the action that Telstra will take in relation to the steps involved in migrating fixed-line services that it supplies to customers from a network over which it is in a position to exercise control to the national broadband network (NBN) (other than those services and networks which have been exempted under sections 577A(20) and (21)). It must also set out a timetable for the taking of that action, or a method for determining such a timetable. The reference to a method for determining a timetable is intended to permit Telstra to provide for the timetable for migration to relate to the progressive rollout of the NBN.

The purpose of the migration plan principles is to define in greater detail the matters that the migration plan must deal with and the manner in which it must deal with them.

Under subsection 577BC(5), Telstra is not permitted to give the ACCC a draft migration plan unless the Minister has made the Determination under subsection 577BB(1) specifying migration plan principles. The ACCC must approve a migration plan that complies with the migration plan principles. Before making a decision on whether to approve a draft migration plan, the ACCC must publicly consult for a period of 28 days on whether the draft migration plan meets the migration plan principles.

Background

The definitive agreements between Telstra and NBN Co Limited will provide for the progressive disconnection of Telstra's copper network and the broadband capability of its hybrid fibre-coaxial (HFC) network as the wholesale-only NBN Co fibre network is rolled out, and will deliver the envisaged structural reform of the telecommunications sector.

The progressive migration of Telstra's fixed-line customer services to the NBN will result in substantial long-term benefits for Australia. Undertaking structural separation in this manner will lead to a national outcome where there is a wholesale-only network operating across the country which is not controlled by any retail company. Separation between the network provider and retail providers will mean better and fairer infrastructure access for service providers, greater retail competition and better services for consumers and businesses.

The Determination is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (see subsection 577BB(4) of the Act). Under subsection 577BB(3), the Minister must cause a copy of the Determination to be published on the website of the Department of Broadband, Communications and the Digital Economy.

Consultation

Under subsection 577BB(2), the Minister must publicly consult for a period of 14 days before making the migration plan principles.

Drafts of five regulatory instruments which create the framework for Telstra's structural separation, including a draft of this Determination, were released for public consultation for a period of 14 days on 1 June 2011.

In response, submissions were received from the Competitive Carriers' Coalition (CCC), Optus, Telstra, Australian Communications Consumer Action Network (ACCAN), Vodafone Hutchison Australia (VHA) and Herbert Geer (on behalf of iiNet, Internode and Adam Internet). Matters that have been addressed in the Determination in response to an issue raised by a submitter are identified in the discussion of the relevant section set out below.

The Department of Broadband, Communications and the Digital Economy also consulted directly with Telstra, NBN Co Limited and the ACCC on the draft Determination.

Details of the accompanying Determination are set out in the Attachment.

Details of the *Telecommunications (Migration Plan Principles) Determination 2011***Part 1—Preliminary****Section 1—Name of Determination**

Section 1 provides that the title of the Determination is the *Telecommunications (Migration Plan Principles) Determination 2011*.

Section 2—Commencement

Section 2 provides that the Determination commences on the day after it is published on the website of the Department of Broadband, Communications and the Digital Economy.

Section 3—Objects

Section 3 sets out the objects of the Determination. The Government is aware that the actions which will be required to complete the migration of Telstra's fixed-line carriage services to the NBN are unprecedented in the Australian telecommunications sector. In developing the migration plan principles, the Government's objectives are to provide for efficient and timely disconnection of services so that the migration process occurs with minimal customer disruption and to provide for equivalence in disconnection processes so that there is no disadvantage to retail service providers.

Section 4—Definitions

Section 4 sets out definitions of key terms used in the Determination.

The term *hybrid fibre-coaxial network* is given a different meaning for the purposes of the instrument to the meaning it has in the Act. The reason for this is that under the arrangements set out in this Determination and the *Telecommunications (Structural Separation—Networks and Services Exemption) Instrument (No. 1) 2011* (which also uses the definition of the term provided for by the Determination), Telstra will be permitted, under an SSU, to keep using its HFC network to supply certain broadcasting services (television and audio), but will not be permitted to use that network to supply internet services. The definition of the term in the Act specifically refers to a network capable of supplying internet services. For this reason, the definition of the term in the Determination clarifies that, for the purposes of the two Determinations, in determining whether a telecommunications network is a HFC network, it is not relevant whether that network is capable of being used to supply internet services.

The terms *disconnection date*, *fibre rollout region*, *region ready for service date* and *passed by the NBN Co fibre network* include references to material that is to be published by NBN Co on its website at some point in the future. Subsection 589(2) of the Act permits an instrument made under the Act (such as the Determination) to make provision in relation to a matter by applying, adopting or incorporating a matter contained in any other instrument or writing, as in force at a particular time, or from time to time, even if that instrument or writing does not yet exist when the instrument is made.

The term *copper line* is defined by reference to a line or series of lines that is part of a copper network. The definition of *copper network* clarifies that such a network may include copper or aluminium wire based lines.

Part 2—Migration Plan Principles

Section 5—Migration plan principles

Section 5 specifies that the principles set out at sections 8 to 38 of the Determination are the migration plan principles.

Section 6—Types of principles

Section 6 explains that the Determination sets out three types of migration plan principles. General principles describe the overarching policy principles that must be met by the migration plan; the specific principles set out the policy principles in greater detail; and the procedural principles set out procedural matters that must be included in the plan.

Section 7—Compliance with the principles

Under subsection 7(1), the Determination will require the migration plan to be considered against general principles, specific principles and procedural principles. In accordance with subsections 577BD(2), 577BDA(2), 577BDB(2) and 577BDC(2) of the Act, if the ACCC is satisfied that the draft migration plan complies with the migration plan principles, then the ACCC must approve the plan.

Subsections 7(2) and (3) provide that where the Determination imposes a requirement or role for the independent telecommunications adjudicator (ITA), that obligation is only required if Telstra's SSU provides for the establishment of the ITA. Nothing in this Determination requires the SSU or the migration plan to establish an ITA.

Part 3—General principles and specific principles

Division 1—General principle—disconnection of carriage services

Section 8—General principle

Subsection 8(1) of the Determination requires the migration plan to provide for the disconnection of fixed-line carriage services supplied to premises in a fibre rollout region in a way that:

- ensures the efficient and timely disconnection of Telstra's wholesale and retail services;
- minimises disruption to end-user services;
- gives wholesale customers autonomy in relation to the timing of disconnection of end-users; and
- provides for disconnection in an equivalent manner between Telstra and its wholesale customers.

Subsections 8(2) and (3) require Telstra to have in place reasonable policies and business practices to ensure that disconnection occurs in the manner prescribed by subsection 8(1). The policies and business practices must provide for Telstra to facilitate the migration of its wholesale customers in a way that minimises service outage and the time taken to port local telephone numbers to the NBN or undertake any ancillary procedures, to the extent it is in Telstra's control to do so.

Under the general principle in Division 1 there are eight specific principles.

Section 9—Specific principle—disconnection of carriage services using copper networks

Process for disconnection of copper networks in fibre rollout region

Section 9 provides that the migration plan must set out the processes Telstra will use to disconnect fixed-line carriage services in a fibre rollout region from its copper network, and for those processes to be set out in sufficient detail to enable the ACCC to be satisfied that they provide for the equivalent treatment of Telstra's wholesale customers consistent with the principles set out at sections 8 and section 21 (see subsections 9(1) and (2)).

Subject to section 23 in the Determination, subsection 9(3) requires any local number portability arrangements set out in the migration plan to be consistent with industry arrangements. Section 23 sets out a process to amend, vary, modify or replace a disconnection process.

Subsections 9(4) to (7) require the migration plan to set out the process and the period by which Telstra will disconnect from its copper network a premises for which Telstra has not, by the relevant disconnection date, received an order to disconnect any remaining services still being supplied to that premises (defined by subsection 9(7) as a *no-order disconnection premises*). The period by which Telstra must disconnect such premises must not be longer than:

- 90 business days in the case where an order for connection to the NBN has been placed with NBN Co, but the connection has not been completed by the disconnection date for that fibre rollout region (see paragraphs 9(5)(c) and 9(6)(a));
- the maximum period allowed for specified types of no-order disconnection premises as set out in an agreement between Telstra and NBN Co given to the ACCC to which subsection 577BA(3) of the Act applies (see paragraph 9(6)(b) and subsections 9(6A) and (6B)); and
- 10 business days in all other cases (see paragraph 9(6)(c)).

Subsection 577BA(3) of the Act provides an authorisation for the purposes of Part IV of the *Competition and Consumer Act 2010* of certain conduct relating to contracts, arrangements and understandings entered into by Telstra and NBN Co, if the ACCC is given a copy of such an agreement prior to accepting the SSU. This provision of the Determination, and other provisions referring to this section of the Act, recognise that the ACCC will have visibility of relevant agreements between Telstra and NBN Co, and require that matters in the migration plan not be inconsistent with those agreements.

Paragraph 9(5)(e) responds to an issue raised by the CCC, Optus and VHA in their submissions on the draft of this Determination, and requires Telstra to notify a wholesale

customer prior to disconnecting a no-order disconnection premises where that wholesale customer is supplying services to that no-order disconnection premises.

Subsections 9(8) to (9) require the migration plan to specify any relevant circumstances in which Telstra will not disconnect by the designated day premises which have been passed by the NBN Co fibre network. Any such circumstances must not be inconsistent with the circumstances set out in an agreement between Telstra and NBN Co given to the ACCC to which subsection 577BA(3) of the Act applies. As provided for in item 3 of the table at Schedule 1 to the *Telecommunications (Structural Separation—Networks and Services Exemption) Instrument (No.1) 2011*, fixed-line carriage services supplied to premises in the circumstances set out in the migration plan in accordance with subsections 9(8) and (9) are exempt from Telstra's structural separation requirements.

Apart from the relevant circumstances specified in subsections 9(8), subsection 9(10) requires the migration plan to specify that Telstra will disconnect by the designated day premises that are passed by the NBN Co fibre network.

Section 10—Specific principle—disconnection of carriage services using hybrid fibre coaxial networks

Similar to section 9, section 10 requires the migration plan to set out the processes and the period by which Telstra will disconnect fixed-line carriage services from its HFC network, including in relation to a premises that has not had its services migrated to the NBN by the disconnection date. As Telstra does not supply voice or wholesale telecommunications services over its HFC network, provisions relating to equivalence, local number portability and notifying wholesale customers prior to disconnection are not required under this principle.

Subsections 10(6) to 10(8) replicate subsections 9(8) to 9(10) except that they relate to a HFC network. Similarly, as provided for in item 4 of Schedule 1 to the *Telecommunications (Structural Separation—Networks and Services Exemption) Instrument (No.1) 2011*, fixed-line carriage services supplied to premises in the circumstances set out in the migration plan in accordance with subsections 10(6) and 10(7) are exempt from Telstra's structural separation requirements.

Section 11—Specific principle—coordination of connection and disconnection

Subsection 11(1) requires the migration plan to specify how Telstra will give its wholesale customers autonomy in relation to decisions about disconnection to allow them to coordinate with NBN Co to minimise the period of any service outage. As a result, this provision gives retail service providers the responsibility for managing their own migration processes, with Telstra acting on their disconnection instructions.

Under current industry processes, cancellation of a retail voice service automatically terminates any broadband service or any other fixed-line carriage service supplied over the same line. Subsection 11(2) requires the migration plan to include a requirement for Telstra to notify retail customers to whom it supplies only a voice service that cancellation of the voice service will result in the cancellation of any other fixed-line carriage services supplied over the same line.

Subsections 11(3) and (4) require the migration plan to include a requirement for Telstra to notify wholesale customers where the cancellation of a retail voice service results in the cancellation of fixed-line carriage services supplied by those wholesale customers. Subsections 11(3) and (4) respond to an issue raised by the CCC, Optus and VHA in their submissions on the draft of this Determination.

Section 12—Specific principle—restrictions on the supply of carriage services prior to and after the disconnection date

Section 12 requires the migration plan to specify any reasonable circumstances in which Telstra proposes to restrict the processing of transactions for retail or wholesale customers in relation to the supply of services over its copper or HFC networks. The principle specifies that any restrictions proposed must also meet the following criteria: be consistent with the equivalence principles outlined in sections 8 and 21; be for the shortest period reasonably required; and be open to review at the request of the ACCC, the ITA or a wholesale customer (subsections 12(2) and (3)).

Should the ACCC, ITA, or a wholesale customer request Telstra to review any proposed restrictions on the processing of transactions over its copper or HFC networks, then subsections 12(3) and (4) require Telstra to review the restrictions, consult with NBN Co and assess whether the restrictions require adjustment. Should the restrictions require adjustment, subsection 12(5) requires the migration plan to set out the actions that Telstra will take as a result of the review.

The references in section 12 to the ITA only apply where Telstra's SSU provides for the establishment of the ITA (see subsection 7(2)).

Subsection 12(6) requires the migration plan to specify the circumstances in which Telstra will refuse, or agree, to a request to supply fixed-line carriage services over its copper and HFC networks to a premises in a fibre rollout region after Telstra has disconnected that premises. As provided for in subsection 38(3) of the Determination, provisions set out in the migration plan to meet subsection 12(6) will never cease to have effect.

Section 13—Specific principle—special services

Subsections 13(1) and (2) require the migration plan to set out when special services and special service inputs will be disconnected.

Special services are identified in the Schedule to the Determination and are legacy services provided by Telstra on a wholesale or retail basis over its copper network which the NBN Co fibre network may not initially be capable of supporting (subsection 13(5)). Examples of special services include electronic funds transfer at point of sale (EFTPOS) or business/commercial applications supported by Integrated Services Digital Network (ISDN).

Special service inputs are used by wholesale customers to supply services which are substantially similar to special services.

The migration plan must ensure that special services and special service inputs are disconnected from a separating network in accordance with the general principles applying

to disconnection at section 8 and in accordance with the timetable for disconnection at section 17.

Sections 13(3) requires that the migration plan must establish a process, in accordance with the principle of equivalent treatment at section 21, which would allow a wholesale customer to nominate certain wholesale carriage services as special service inputs.

Subsection 13(4) requires that if requested by the Commonwealth or the ACCC, Telstra will notify that party of any special service inputs identified by that process.

As provided for in items 11 and 12 of Schedule 1 to the *Telecommunications (Structural Separation—Networks and Services Exemption) Instrument (No.1) 2011*, Telstra may under certain conditions continue to supply special services and special service inputs after the designated day.

Section 14—Specific principle—maintaining a soft dial tone

Section 14 specifies that the migration plan must include a requirement for Telstra to, as far as practicable, maintain a soft dial tone service in the situation where Telstra has disconnected a premises to which it supplied retail standard telephone services (see subsection 14(2)) or wholesale line rental (see subsection 14(1)). The migration plan must require Telstra to maintain the soft dial tone service for a period up to the earliest of one of the following dates:

- 20 business days after the disconnection date for the fibre rollout region;
- the date of any disconnection, for the purposes of pull-through, of a copper line used to supply a carriage service to the premises; and
- the date that the premises is connected to the NBN.

For the purposes of this Determination, a soft dial tone service is taken not be a fixed-line carriage service (see subsection 4(7)).

Section 15—Specific principle—reactivation of carriage services

Subsections 15(1) and (3) set out a requirement for the migration plan to specify the circumstances in which Telstra may reactivate services over its copper and HFC networks following disconnection, including the timeframe for when it must disconnect any fixed-line carriage services it has reactivated. Subsection 15(2) requires the equivalent treatment of wholesale carriage services to Telstra's retail carriage services in the process of reactivating a service.

Section 16—Specific principle—equipment of wholesale customers

Section 16 requires the migration plan to include a fair and equitable process for wholesale customers to remove any equipment belonging to that wholesale customer from a Telstra facility such as an exchange.

Division 2—General principle—timetable for disconnecting fixed-line carriage services

Section 17—General principle

In accordance with paragraph 577BC(2)(b) of the Act, subsections 17(1) to (3) require the migration plan to set out a timetable, or a method for determining a timetable, for disconnecting services from a separating network in a fibre rollout region. Such timetables must be coordinated with NBN Co's rollout schedule, except to the extent they deal with special services and special service inputs.

Subsection 17(4) requires the migration plan to set out a timetable, or a method for determining a timetable, for Telstra to cease to supply any special services and any special service inputs.

Under the general principle in Division 2 there are three specific principles.

Section 18—Specific principle—timing of disconnection orders

Section 18 requires the migration plan to describe the dates within which a wholesale customer can lodge a disconnection order for a retail customer in respect of each fibre rollout region. It is intended that these dates could be described by reference to other dates such as the region ready for service date and the disconnection date for each fibre rollout region.

Section 19—Specific principle—control of disconnection timing and processes

Consistent with paragraph 8(1)(c) and subsection 11(1), section 19 requires the migration plan to set out the reasonable steps that a wholesale customer may take to control the timing of the disconnection of customer services following the region ready for service date for a fibre rollout region. Under paragraph 19(b), the migration plan must specify any known circumstances where a wholesale customer may not be able to control the timing of disconnection.

Section 20—Specific principle—provision of information regarding disconnection

Subsection 20(1) requires the migration plan to set out minimum requirements for Telstra to notify its own retail customers and wholesale customers operating over a separating network in a fibre rollout region of the disconnection dates for each fibre rollout region.

Subsection 20(2) specifies that this notification must be in accordance with the general principles at sections 8 and 21. Where Telstra continues to supply a retail customer with fixed-line carriage services over a separating network four months before the disconnection date for that fibre rollout region, the migration plan must include a requirement for Telstra to notify those retail customers of their impending disconnection no less than three months before the relevant disconnection date (subsection 20(3)).

Division 3—General principle—equivalence regarding disconnecting Telstra retail business units and wholesale customers

Section 21—General principle

Section 21 requires the migration plan to provide for the equivalent treatment of Telstra's wholesale customers to its own retail business units in the implementation of the processes for disconnecting services. This principle is intended to prevent Telstra from using its role in disconnecting services to gain unfair commercial advantage as fixed-line carriage services transition to the NBN Co fibre network.

Under the general principle in Division 3 there is one specific principle.

Section 22—Specific principle—prohibition of marketing activity

Section 22 requires the migration plan to specify that an agent or employee of Telstra is prohibited from undertaking any marketing activity when: connecting non-Telstra customer services to the NBN fibre network; disconnecting a retail customer of a wholesale customer from a Telstra network; and attending a site on behalf of NBN Co.

Subsection 22(2) allows marketing activity to occur where it relates to services provided by Telstra in fulfilment of the universal service obligation and that marketing activity has been requested by the Commonwealth.

Division 4—General principle—use of adequate processes

Section 23—General principle

In order to minimise industry costs and disruption, it is proposed to use existing processes, as far as practicable, for implementing and managing the process for disconnecting services at premises in fibre rollout regions and the porting of local telephone numbers to another network.

Section 23 makes it clear that the migration plan must require Telstra to work in good faith with industry participants to ensure the processes for disconnecting services and porting numbers are efficient, minimise disruption to service supply, give wholesale customers autonomy regarding the migration of their customer services and are equivalent to the way in which Telstra disconnects its own services.

However, if the ACCC or the ITA determines that those processes do not meet these criteria, then under subsections 23(2) and (3) and section 25, Telstra is required to take action to amend, vary or modify the existing process or develop a new disconnection measure where the ACCC or the ITA determines it is reasonable and practicable for Telstra to do so. In determining whether it is reasonable and practicable, the ACCC and the ITA must have regard to the cost to Telstra in taking the action, the effectiveness of that action, and the consequences of not taking the action.

The references in section 23 to the ITA only apply where Telstra's SSU provides for the establishment of the ITA (see subsection 7(2)).

Under the general principle in Division 4 there are three specific principles.

Section 24—Specific principle—specification of disconnection processes

Section 24 requires the migration plan to set out the processes that Telstra will use to disconnect a wholesale customer's service, including the processes by which a wholesale customer may lodge, and Telstra will accept, process and execute, a disconnection order from a wholesale customer. Subsection 24(2) requires the migration plan to specify processes which will be used to disconnect services in various scenarios which may arise. The disconnection scenarios listed in subsections 24(2)(a) to (c) include:

- the disconnection of copper services to a premises in the course of connecting that premises to the NBN Co fibre network by 'pull through';
- the disconnection of a copper line used by more than one service provider; and
- the disconnection of a copper line when only a standard telephone service is provided.

The term 'pull through' means the process by which an existing copper lead-in to a premises is used as a draw to pull through the fibre line.

Section 25—Specific principle—development of disconnection measures

Where the ACCC or the ITA determines, in accordance with paragraph 23(3)(b), that a disconnection process needs to be independently developed, the specific principle in section 25 provides that the migration plan must require the ACCC or ITA to approve the new disconnection measure and require that the measure be consistent with the general principles at sections 8 and 21.

The references in section 25 to the ITA only apply where Telstra's SSU provides for the establishment of the ITA (see subsection 7(2)).

Section 26—Specific principle—modifications to existing processes and disconnection measures

Section 26 provides that the migration plan must set out a process for how wholesale customers may propose modifications to an existing process set out in the migration plan or to a new disconnection measure developed in accordance with the specific principle in section 25. The principle makes it clear where Telstra receives such a proposal, it must consider and consult in good faith with the wholesale customer.

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

Section 27—General principle

Section 27 requires the migration plan to specify that Telstra must use standard operating systems, interfaces and processes for disconnection. This is intended to minimise costs for

both Telstra and other industry participants by using existing processes for migration processes.

However, section 27 specifies that if the ACCC or the ITA determines that a system, interface or process is inconsistent with the general principles at sections 8 and 21, then Telstra must amend, vary or modify the system, interface or process if the ACCC or the ITA determines that it is reasonable and practicable for Telstra to do so. A system, interface or process is inconsistent with the general principles at sections 8 and 21 if it is inefficient, does not minimise disruption to service supply, does not allow wholesale customers to retain autonomy regarding the migration of their customer services, or is not equivalent to the way in which Telstra disconnects its own services.

Similar to section 23, in determining whether it is reasonable and practicable, the ACCC and the ITA must have regard to the cost to Telstra in taking the action, the effectiveness of that action, and the consequences of not taking the action.

Where the ACCC or the ITA determines that the standard operating systems, interfaces and processes used for disconnection require amendment, variation or modification, then subsection 27(2) makes it clear that the migration plan must require Telstra to amend, vary or implement the modification.

The references in section 27 to the ITA only apply where Telstra's SSU provides for the establishment of the ITA (see subsection 7(2)).

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

Section 28—General principle

Section 28 requires Telstra to notify the ACCC in writing of the kinds of information Telstra will supply to NBN Co in relation to the supply of fibre services or the disconnection of services from premises in a fibre rollout region and the circumstances in which it will supply that information.

This provision is intended to assist the ACCC in preventing Telstra from gaining an unfair competitive advantage over its wholesale customers as a consequence of supplying particular types of information to NBN Co to aid the rollout of the NBN.

Division 7—General principle—protection of information

Section 29—General principle

In order to meet its commitments under the migration plan, from time to time Telstra may be provided with information by NBN Co and by Telstra's wholesale customers in relation to the supply of fibre services or the disconnection of services from premises in a fibre rollout region. Section 29 requires the migration plan to set out effective measures so that Telstra cannot use such information to gain an unfair commercial advantage over its wholesale customers.

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

Section 30—General principle

Consistent with subparagraph 577BC(2)(a)(ii) of the Act, section 30 of the Determination requires the migration plan to set out the action Telstra will take to commence to supply services to customers using the NBN.

Part 4—Procedural principles

Part 4 of the Determination sets out procedural principles which Telstra must provide for in its migration plan.

Section 31—Procedural principle—reporting framework

Section 31 of the Determination requires the migration plan to provide for a planned reporting framework so that the ACCC can monitor Telstra's compliance with the migration plan. The reporting framework provides for:

- Telstra to report to the ACCC on the implementation of, and compliance with, the migration plan in a timely and regular manner (subsection 31(1));
- a process for the ongoing assessment of whether the provisions of the migration plan comply with the general principles of the plan (subsection 31(2));
- a requirement that any reports required to be provided to the ACCC by Telstra as part of the plan also be provided to the Commonwealth on request (subsection 31(3));
- a requirement that sufficient information be provided to the ACCC to monitor Telstra's compliance with, and the effectiveness of, the migration plan (subsection 31(4)); and
- a requirement that the ACCC may consult with, and disclose certain information to, wholesale customers and other stakeholders to investigate Telstra's compliance with the migration plan (subsection 31(5)).

The inclusion of subsection 31(5) in the Determination responds to an issue raised by the CCC, Optus and VHA in their submissions to the draft of this Determination.

Section 32—Procedural principle—rectification

Section 32 requires Telstra to set out a rectification process in its migration plan to apply if the reporting framework identifies that certain provisions in the migration plan do not comply with the general principles.

Section 33—Procedural principle—dispute resolution

Subsection 33(1) requires the migration plan to provide for adequate dispute resolution processes and mechanisms for dealing with potential disputes that may arise between Telstra and its wholesale customers under the migration plan. Subsection 33(2) requires the migration plan to specify a role for the ITA, if the ITA is established under the SSU (see

subsections 7(2) and (3)), in overseeing a process for resolving disputes between Telstra and a wholesale customer under a provision of the migration plan.

Section 34—Procedural principle—scope of modifications to processes

Section 34 requires the migration plan to provide that the ACCC and the ITA must not make a determination under sections 23, 25, 27 or 32 of the migration plan principles (relating to the use of existing or new disconnection processes) that has the effect or likely effect of:

- preventing Telstra from disconnecting soft dial tone to a premises (paragraph 34(c));
- preventing Telstra from disconnecting premises after the disconnection date on its copper and HFC networks (paragraphs 34(d) and (e));
- preventing Telstra from disconnecting each class of special services and special service inputs on and from the disconnection date determined in accordance with section 13 (paragraph 34(f));
- preventing Telstra from disconnecting any other fixed-line carriage services supplied using a copper line without notice when Telstra disconnects a standard telephone service (paragraph 34(g)); and
- 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 (paragraph 34(h)).

In line with the Government's policy of structural reform for the telecommunications sector, these provisions give certainty to Telstra that it will not be prevented from disconnecting its copper and HFC networks in accordance with the migration plan and the definitive agreements as the NBN Co fibre network is deployed.

The references in section 34 to the ITA only apply where Telstra's SSU provides for the establishment of the ITA (see subsection 7(2)).

Section 35—Procedural principle—consultation with NBN Co

Section 35 specifies that the migration plan must require Telstra to consult with NBN Co in certain circumstances.

Section 36—Procedural principle—required measure development processes

A number of provisions in this Determination require Telstra to specify in its migration plan processes, measures, business practices or other matters relating to disconnection ('required measures'). Recognising that it may take Telstra some time to develop these required measures, section 36 provides that where Telstra does not have a current process in place that it can specify in the migration plan, it may instead outline a process for the development of a required measure after it has submitted the migration plan to the ACCC. Telstra must develop a required measure within 6 months, or such longer time as permitted by the ACCC. This provision permits Telstra to submit a migration plan without having to finalise the detail of all of these processes.

In developing a required measure, Telstra must:

- ensure it complies with the migration plan principles;
- consult with wholesale customers;
- publish a work plan with completion milestones;

- keep the ACCC informed of progress; and
- seek approval of the ACCC for the required measures

Subparagraph 36(3) requires the migration plan to provide for the ACCC to consider a required measure given to it by Telstra in accordance with section 36 as though the required measure were a variation to the migration plan. Under section 577BF of the Act, the ACCC must undertake public consultation on any proposed variation to the migration plan, unless the variation is of a minor nature. If the ACCC is satisfied that the final migration plan as varied complies with the migration plan principles, it must approve the variation.

The inclusion of section 36 in the Determination responds to an issue raised by Telstra in its submission on the draft of this Determination.

Section 37—Procedural principle—test procedure processes

Section 37 permits the migration plan to provide for Telstra to set out processes for conducting test procedures relating to processes, systems, interfaces or disconnection measures under the migration plan, and provides a mechanism for the ACCC to notify Telstra of any concerns it has about those procedures. If the ACCC advises Telstra of concerns with a test procedure, Telstra must not commence the procedure, or if it has commenced, Telstra must cease the procedure as soon as practicable.

Section 38—Procedural principle—cessation of migration plan

The migration plan may also include provisions related to the cessation of the migration plan. Given the special status of a migration plan in Part XIC of the *Competition and Consumer Act 2010* (see for example paragraph 152AR(4)(f) and sections 152BCCA and 152BDCA), it is appropriate that provision be made for the cessation of provisions of the migration plan. Section 38 provides that the migration plan ceases to have effect once Telstra has disconnected every relevant copper and HFC service in every NBN fibre rollout region. However, this provision provides that the measures set out to protect information and the circumstances in which Telstra may or may not supply services over networks which have been disconnected do not cease.

Schedule—Special services

The Schedule sets out the special services for the purposes of the Determination. Section 13 and subsection 17(4) set out provisions relating to special services.