



Telstra corporate restructure: Minor variations to certain Record Keeping Rules, the Final Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services

Consultation paper

November 2022

Contents

1. Introduction	2
2. Background.....	3
3. Proposed changes to the Record Keeping Rules	4
4. Proposed changes to the Final Access Determinations Nos. 1 to 7 of 2019 for Fixed Line Services	5
5. Proposed changes to the Interim Access Determination No. 1 of 2021 (SBAS)	5
6. Commencement.....	5
7. Consultation questions.....	6
8. Next steps.....	6

1. Introduction

1.1. Purpose

Telstra has notified the Australian Competition and Consumer Commission (ACCC) that minor variations are required to various ACCC instruments to reflect its impending corporate restructure. The changes to Telstra's structure involve a reallocation of the company's assets and business functions across new and existing subsidiaries.

Minor variations are required to some record-keeping rules and access determinations to ensure they refer to the correct demerged Telstra company.

The purpose of this consultation paper is to seek stakeholders' views on the ACCC's proposed amendments to:

- the following Record Keeping Rules (RKR):
 - Telstra Customer Access Network RKR
 - Division 12 RKR
 - Internet Activity RKR
 - Audit of Telecommunications Infrastructure Assets RKR
- the Final Access Determinations Nos. 1-7 of 2019 for Fixed Line Services (FADs)
- the Interim Access Determination No. 1 of 2021 for Superfast Broadband Access Service (IAD).

The ACCC is proposing to make amendments to the RKRs listed above, the FADs, and the IAD to reflect Telstra's new structure, and is seeking stakeholders' comments on the proposed changes and on when the changes should come into effect.

1.2. Submission process

The ACCC is seeking submissions from relevant stakeholders, including Telstra, on the specific questions raised in this consultation paper.

Submissions should be provided by **Wednesday 14 December 2022**.

Submission of commercial-in-confidence material

All submissions will be considered by the ACCC as public and will be posted on the ACCC website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and commercial-in-confidence version of their submission.

The *ACCC-AER information policy* (2014) sets out the general policy of the ACCC and the Australian Energy Regulator on the collection, use, and disclosure of information. A copy of the guideline is available on the ACCC's [website](#).

Contact officers and submission lodgement details

Please email submissions to: telco.regulation@acc.gov.au

Enquiries in relation to the RKRs should be directed to Kristopher Morey on (03) 9290 1948 or Luis Martinez at (02) 9230 3875.

Enquiries in relation to the FADs and IADs should be directed to Jennifer McGrath on (07) 3835 4600 or Kim Hollis on (07) 3835 4635.

2. Background

2.1. Telstra Customer Access Network RKR

The Telstra Customer Access Network RKR (CAN RKR) was first made in September 2007, with no amendments since then. The Telstra CAN RKR collects quarterly information on the number of services in operation running on Telstra's legacy copper network.

The report includes details on the number and location of voice-only, voice and DSL and DSL-only services provided by Telstra and other retail service providers of voice and data services still running on Telstra's copper access network. As part of these rules, Telstra is also required to provide a snapshot of the data for public release.

2.2. Division 12 RKR

The Division 12 RKR was first issued in December 2004 and was subsequently reviewed in April 2009, August 2010, July 2013, and December 2020. The current Division 12 RKR collects information on fixed voice, mobile and internet services on an annual (financial year) basis from Telstra, Optus, iiNet, TPG Corporation and TPG Telecom.

Data collected under the Division 12 RKR relates to services in operation (SIO), revenue, call minutes, number of calls, and includes bill sample information. A subset of the information collected is published in the ACCC's annual Communications Market Report.

2.3. Audit of Telecommunications Infrastructure Assets RKR

The Infrastructure RKR was first issued in December 2007 and is currently being reviewed. It requires 24 specified carriers to report on the extent and location of their core network and customer access network infrastructure, as well as leased infrastructure or infrastructure operated on behalf of third parties.

2.4. Internet Activity RKR

The Internet Activity RKR was issued in December 2018, and revised in December 2020. It collects information bi-annually from 13 retail service providers (RSPs) including iiNet Limited (068 628 937), TPG Corporation Limited (093 058 069) (formerly known as TPG Telecom Limited), and TPG Telecom Limited (096 304 620) (formerly known as Vodafone Hutchison Australia Pty Limited).

Information gathered under the Internet Activity RKR includes the number of retail services in operation in terms of access connection, wholesale speed tier and the volume of data downloaded across NBN, non-NBN fixed, and mobile services. The full suite of information collected under the RKR is released as part of the Internet Activity Report.

2.5. Final Access Determinations Nos. 1 to 7 of 2019 for Fixed Line Services

On 1 November 2019, the ACCC released its decision to make FADs for seven declared fixed line services, namely:

- line sharing service
- local carriage service
- fixed originating access service
- fixed terminating access service

- unconditioned local loop service
- wholesale line rental
- wholesale ADSL service.

These were published as one document, namely the Final Access Determinations Nos. 1 to 7 of 2019 for Fixed Line Services.¹ The FADs commenced on 15 November 2019 and apply until 30 June 2024.

The declared fixed line services are mainly supplied by Telstra over its copper public switched telephone network and digital subscriber line network. They form an important input used by retail service providers to supply voice and broadband services to downstream fixed telecommunications markets.

2.6. Interim Access Determination No. 1 of 2021 for Superfast Broadband Access Service

The Superfast Broadband Access Service (SBAS) is a declared wholesale access service that access seekers can use to supply non-NBN fixed line superfast broadband services to end-users.

In July 2021, the ACCC commenced a public inquiry to make a final access determination for SBAS following the declaration of the service.²

The Interim Access Determination No. 1 of 2021 (SBAS) dated 16 July 2021 maintains current regulated price and non-price terms while the ACCC finalises the public inquiry to make a final access determination for SBAS. The interim access determination (IAD) applies from 27 July 2021 to the day immediately before the day on which the final access determination for SBAS comes into force.³

3. Proposed changes to the Record Keeping Rules

The proposed amendments to the *Telstra CAN RKR*, the *Division 12 RKR*, and the *Internet Activity RKR* replaces Telstra Corporation Limited (ACN 051 775 556) with Telstra Limited (ACN 086 174 781) as the record keeper reporting under these three rules. These changes reflect the fact that Telstra's retail and wholesale operations of fixed, data, mobility and wireless services, among other services, will be transferred to Telstra Limited.⁴

The proposed amendment to the *Infrastructure RKR* adds Telstra Limited (ACN 086 174 781) to the list of record keepers in addition to Telstra Corporation Limited (ACN 051 775 556). This amendment reflects that, following the restructure, ownership of part of the reportable assets under these rules will continue to be held by Telstra Corporation Limited, while the remaining reportable assets will be transferred to Telstra Limited.⁵

A minor amendment is required to remove references to the *Trade Practices Act 1974* in the *Telstra CAN RKR* and replace them with references to the *Competition and Consumer Act 2010*.

¹ See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/non-nbn-fixed-line-services-access-regulation/fixed-line-services-fad-inquiry-2018/final-decision>.

² See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/non-nbn-fixed-line-services-access-regulation/superfast-broadband-access-service-sbas-final-access-determination-inquiry-2021>.

³ See <https://www.accc.gov.au/public-registers/telecommunications-registers/s152bcw-access-determinations-register/interim-access-determination-no-1-of-2021-for-the-superfast-broadband-access-service-sbas>.

⁴ Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022 p.11

⁵ Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022 p.11

4. Proposed changes to the Final Access Determinations Nos. 1 to 7 of 2019 for Fixed Line Services

The proposed amendments to the FADs for Fixed Line Services introduces a definition of 'Telstra Provider' and 'demerged Telstra Companies.' The proposed amendments also replace various references to 'Telstra' with 'Telstra Provider' for clarity around the specific entity being referred to at relevant points throughout the FADs.

5. Proposed changes to the Interim Access Determination No. 1 of 2021 (SBAS)

The proposed amendments to the SBAS IAD introduces a definition of 'Telstra Provider' and 'demerged Telstra Companies' and replaces a reference to Telstra Corporation Limited.

A minor further amendment is proposed to reflect that the IAD expires on the day immediately before the day on which a new access determination comes into force. This accords with the ACCC decision on 26 October 2022 to extend the IAD until the above-described expiry date.

6. Commencement

6.1. Commencement of the RKR

Given the nature of the proposed changes to the RKR, the ACCC is proposing that changes to the RKR come into effect on the day that Schedules 2 and 3 of the *Telstra Corporation and Other Legislation Amendment Act 2021* come into effect. At this stage, this is likely to occur in January 2023.

6.2. Commencement of the amended access determinations

The ACCC notes Telstra's intention to finalise its business restructure effective 1 January 2023. However, this date is subject to change, pending Federal Court approval of the restructure.⁶ The ACCC is therefore seeking stakeholder views on the appropriate commencement date for the changes to the FADs and the IAD.

We consider that potential commencement dates include, but are not limited to, the following options:

- 1 January 2023, though we note that the business restructure may not be in effect by this date
- on the day that Schedules 2 and 3 of the *Telstra Corporation and Other Legislation Amendment Act 2021* come into effect, though we note that the business restructure may not be finalised on this date
- another date, in accordance with stakeholder submissions to this consultation paper.

⁶ Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022.

7. Consultation questions

The ACCC is seeking comments in response to the questions set out below, and any other matters relating to the proposed changes to the Telstra customer Access Network RKR, the Division 12 RKR, the Infrastructure RKR, the Internet Activity RKR, the FADs and the IAD.

Where relevant, we ask that you provide reasons in support of your view.

1. Do you have any comments about the proposed changes to the RKR, FADs, or IAD to reflect changes in Telstra's corporate restructure?
2. Are there any issues arising from the proposed changes to the RKR that might impact the public's use of any RKR data that is publicly disclosed?
3. Are there any issues arising from the proposed changes to the FADs or IAD that might impact access to the relevant declared services?
4. Do you have any comments on when the variations to the FADs and IAD should commence?

8. Next steps

The ACCC will take into consideration all submissions to the consultation. Should substantial issues arise, further consultation may be undertaken either directly with respondents, or publicly.

Subject to consultation outcomes, the ACCC intends to publish the varied RKR, FADs, and IAD in January 2023.