

Commonwealth of Australia

Telecommunications Act 1997

**Australian Competition and Consumer Commission
(Inquiry into Price Control Arrangements)
Direction (No. 1) 2009**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy, make the following Direction under subsection 496(1) of the *Telecommunications Act 1997*.

Dated 23 DEC 2009 2009



STEPHEN CONROY
Minister for Broadband, Communications and the Digital Economy

1 Name of Direction

This Direction is the *Australian Competition and Consumer Commission (Inquiry into Price Control Arrangements) Direction (No. 1) 2009*.

2 Commencement

This Direction commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Cessation

This Direction ceases on the day after the ACCC provides its report to me in accordance with clause 6.

4 Definitions

In this Direction:

ACCC means the Australian Competition and Consumer Commission.

Telstra has the same meaning as in the *Telstra Corporation Act 1991*.

5 Direction – Public Inquiry about Price Control Arrangements for Telstra Services and Facilities

- (1) I direct the ACCC to hold a public inquiry under Division 3 of Part 25 of the *Telecommunications Act 1997* about aspects of the price control arrangements that should apply under Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* for:
 - (a) carriage services;
 - (b) content services; and
 - (c) facilities,supplied by Telstra after the expiry of the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005* at the end of 30 June 2010.
- (2) In conducting this inquiry, I direct the ACCC to have regard to the intention that price controls for legacy telecommunications retail services will remain in place for a further two years, during which time consideration will be given to the impact the transition to the new National Broadband Network environment will have on pricing policy.
- (3) In conducting this inquiry, I direct the ACCC to consider:
 - (a) the appropriate composition of service baskets and the design and level of price caps; and
 - (b) what parts of the current arrangements might benefit from clarification or streamlining.
- (4) In conducting this inquiry, I direct the ACCC to have regard to the following matters:
 - (a) the current state of competition in each of the markets the ACCC considers relevant;
 - (b) the impact of the current price control arrangements, and possible future price control arrangements, on:
 - (i) competition;
 - (ii) the availability, choice, quality and prices of services to consumers and any other impacts on consumers; and
 - (iii) the telecommunications industry, including on economically efficient investment decisions.
- (5) For the avoidance of doubt, nothing in this Direction prevents the ACCC from considering other relevant matters as a part of this inquiry.

6 Direction – Report on the Findings as a Result of the Inquiry

I direct the ACCC to provide me with a report setting out its findings as a result of the inquiry by 12 March 2010.

EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

**Australian Competition and Consumer Commission
(Inquiry into Price Control Arrangements)
Direction (No. 1) 2009**

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

Purpose

The Australian Competition and Consumer Commission (Inquiry into Price Control Arrangements) Direction (No. 1) 2009 (the Direction) is made under subsection 496(1) of the *Telecommunications Act 1997* (Tel Act).

Subsection 496(1) of the Tel Act allows the Minister to give the Australian Competition and Consumer Commission (ACCC) a direction to hold a public inquiry under Division 3 of Part 25 of the Tel Act about a specified matter concerning carriage services, content services or the telecommunications industry.

The Direction requires the ACCC to:

- hold a public inquiry about price control arrangements for carriage services, content services and facilities supplied by Telstra Corporation Limited (Telstra) after 30 June 2010; and
- provide a report to the Minister setting out the ACCC's findings as a result of the inquiry (as required by subsection 505(2) of the Tel Act).

The ACCC must provide its report to the Minister by 12 March 2010.

Background

Under Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Consumer Protection Act) the Minister has the power to determine that charges for specified Telstra retail services are subject to price controls.

The *Telstra Carrier Charges - Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* (the 2005 Determination) applies to Telstra's retail fixed line telephony services and caps the price of basic line rental and several "baskets" composed of telephone calls, line rentals and service connections. It also imposes various other pricing requirements on Telstra, including capped charges for untimed local calls from fixed lines and payphones, and the provision of a basic line rental offer at a uniform price throughout Australia.

The 2005 Determination was originally due to expire on 30 June 2009. However, on 5 June 2009 the Minister extended the expiration date by 12 months to 30 June 2010. The period of the 2005 Determination was extended to enable a detailed review of

retail price controls to be undertaken. Such a review would be required to take into account the impact that the transition to the new National Broadband Network (NBN) will have on pricing policy. Given that the NBN is at an early stage of development, rather than further extend the 2005 Determination, the Minister considers that it is appropriate to direct the ACCC to conduct an inquiry focussing on a few limited issues, so that a new determination can be put into place. It is intended that the new determination will have effect for a period of two years. This will allow for adjustments to be made to the price control arrangements, whilst allowing time for more analysis and further policy development to occur so that more substantial changes can be implemented at a later date.

The ACCC is directed to inquire and report on the appropriate composition of service baskets, and the design and level of price caps, given that the ACCC is the responsible regulator for monitoring and approving Telstra retail price movements. The ACCC can also provide expert advice, in consultation with industry, on any parts of the current price control arrangements which may require clarification or streamlining.

The ACCC is directed to report its findings to the Minister by 12 March 2010. This is to allow time for the Government to consider the ACCC's report and formulate a new determination prior to the expiry date of the 2005 Determination.

Consultation

The ACCC has been consulted in relation to the making of this Direction. No further consultation was considered necessary, given that the ACCC will consult with industry in the course of its inquiry.

Notes on clauses

Clause 1 provides for the citation of the Direction.

Clause 2 provides that the Direction will be registered on the Federal Register of Legislative Instruments and will take effect on the day after its registration.

Clause 3 provides that the Direction will cease on the day after the ACCC provides its report to the Minister in accordance with clause 6. A cessation date is included to overcome the requirement for this Direction to be revoked at a future date, once its effect is finished.

Clause 4 defines the terms to be used throughout the Direction.

Clause 5 requires the ACCC to hold a public inquiry under Division 3 of Part 25 of the Tel Act and sets out matters relevant to the conduct of that inquiry.

Subclause 5(1) specifies the nature of the public inquiry that the ACCC is directed to hold. The inquiry is to address aspects of the price control arrangements that should apply in respect of carriage services, content services and facilities supplied by Telstra after the expiry of the 2005 Determination on 30 June 2010.

Subclauses 5(2), (3) and (4) set out matters that the ACCC is directed to have regard to, or consider, in conducting the public inquiry.

Subclause 5(5) clarifies for the avoidance of doubt, that the ACCC may consider other relevant matters as a part of the inquiry.

Clause 6 directs the ACCC to provide the Minister with a report setting out its findings as a result of the inquiry by 12 March 2010.