Australian Competition & Consumer Commission

Pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS 1 August 2009 to 31 December 2010

December 2009

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Summary

The Australian Competition and Consumer Commission (ACCC) recently extended the declarations for six declared fixed services and has now decided to rollover the 2008-09 indicative prices (including connection charges) for the period from 1 August 2009 until 31 December 2010. The ACCC is of the view that rolling over 2008-09 pricing principles and indicative prices will provide certainty regarding access to regulated services in a period of significant regulatory and industry change and is in the long-term interests of end-users (LTIE).

Consideration of the pricing principles and indicative prices to apply to fixed services for this period has occurred in the context of two key events. First, the roll out of the government's National Broadband Network (NBN) with continued development of the framework in which the NBN will operate. Second, during the course of consultations on the *Draft Pricing Principles and Indicative Prices for LCS, WLR, PSTN OTA, ULLS and LSS 2009* (Draft Pricing Principles) legislation was introduced into parliament – the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* – which has the potential to fundamentally alter the regulatory framework, particularly the way in which pricing determinations for regulated services are made. Parliament is currently considering these changes which involve major reforms to the telecommunications competition framework.

These two events will have a major impact on the future of the telecommunications regulatory environment, particularly in relation to the regulation of the fixed services. The ACCC considers that many of the changes proposed in the Draft Pricing Principles now have potential to disrupt markets unnecessarily in a time of significant uncertainty. Both regulatory reform and the impending NBN continue to raise issues as to the continued appropriateness of the underlying methodology by which the ACCC has approached pricing of these services to date.

For some time the ACCC has recognised that its long held approach to pricing fixed line telecommunications services, a forward looking TSLRIC+ approach with revaluation at every regulatory reset may not be appropriate given the enduring bottleneck nature of fixed services. While the ACCC has traditionally used a forward looking TSLRIC+ approach as a preferred pricing methodology, the ACCC has in its Draft Pricing Principles and other recent pricing and regulatory decisions, acknowledged that it is open to considering other pricing approaches. Specifically, it has flagged the possibility of 'locking in' some of the inputs to the cost estimates of certain services; for example, the value of the assets used to provide the services (the regulated asset base).

The ACCC, at the same time as publishing this determination is releasing a discussion paper *Review of 1997 Guide to Telecommunications Access Pricing Principles for fixed line service*s. The discussion paper recognises that both the telecommunications regulatory, technological and competitive landscape, and the ACCC's experience in regulating the prices of fixed line telecommunications access services, have changed and continue to evolve. The ACCC's openness to alternative pricing approaches has been prompted by two main considerations. First, 'locking in' some of the inputs can provide greater regulatory certainty to both access providers and access seekers. Second, it is now less clear that the build/buy rationale for TSLRIC+ pricing remains

as strong, particularly for fixed-line services. Telstra's copper customer access network (CAN) displays enduring bottleneck characteristics, rather than being a network likely to be bypassed through technological and market developments.

The ACCC's review of its conceptual approach to access pricing for fixed line services acknowledges industry dissatisfaction with the current pricing approach and calls for the development of alternative pricing methodologies for fixed services. The ACCC's view is that it is timely to undertake this review *regardless* of the outcomes of regulatory reform although the ACCC acknowledges that this may impact upon what is achievable in practice. This will allow for a period of short term certainty over access pricing whilst the ACCC reviews and implements the medium/long term approach. Where changes to elements of the current pricing approach are considered appropriate there will need to be sufficient time to prepare for and implement the changes. The decision to roll over pricing principles is a cautious and considered approach and allows time for the ACCC to consult fully on the conceptual approach to pricing fixed services. It also enables the ACCC to fully consider the changes brought about by the introduction of a fibre to the home NBN and provides the industry with short term certainty on pricing while the structure of the NBN and the regulatory environment in which it operates is being determined.

The ACCC recognises that the current circumstances for these pricing principles are unusual, and therefore it is important to reiterate that the indicative access prices set out in a pricing principles determination are non-binding on parties to arbitrations or undertaking assessments. While the ACCC would continue to see indicative prices as an appropriate starting point, the ACCC would still take into account any further and better information that comes to hand during the term of this determination, which it would consider relevant to any dispute.

Given the ACCC's openness to consider alternative pricing methodologies it is considered that the interests of both access seekers and access providers would be best served by limiting the potential disruption that could be caused by moving directly to the pricing as proposed in the Draft Pricing Principles and then, within a relatively short period, having to again reassess pricing principles (and prices) either under a new pricing approach or potentially under a new regulatory regime.

The ACCC considers the roll over of 2008-09 pricing principles and indicative prices for fixed services: responds to industry calls for more certainty as to access pricing in a period of significant change; to be an interim measure to provide some certainty to industry whilst the parliament considers the proposed telecommunications reform bill; enables the ACCC to assess the implications of any legislative changes; will enable the ACCC to consult with industry on its review of access pricing principles for fixed line services; would minimize the level of any pricing disruption caused during a shift to an alternative pricing methodology (such as a RAB approach); and will enable the ACCC to undertake more refinement of the Analysys cost model's valuation of fixed line services.

1. Introduction

Background

In November 2008 the ACCC commenced a public declaration inquiry relating to the declarations for six fixed-line telecommunications services expiring 31 July 2009. The fixed-line services are composed of:

- local carriage service (LCS)
- wholesale line rental (WLR)
- public switched telephone network originating access (PSTN OA)
- public switched telephone network terminating access (PSTN TA)
- unconditioned local loop service (ULLS), and
- line sharing service (LSS).[1]

In July 2009 the ACCC decided to extend the declarations for the above services for a period of five years – see *Fixed Services Review Declaration Inquiry for the ULLS, LSS, PSTN OA, PSTN TA, LCS and WLR Final Decision July 2009* (2009 FSR Declaration Inquiry). In making its decision, the ACCC considered that there was a need for as much regulatory certainty as possible regarding the access arrangements that apply to the six fixed-line services and accordingly extended the declarations for the full statutory period available. A more detailed description of the individual services can be found in the service specific chapters of the 2009 FSR Declaration Inquiry.

Following the extension of the declaration period for these services the ACCC reconsidered the pricing principles and developed its preliminary views on the indicative prices that should apply to the fixed-line services. This process culminated in the release of ACCC's *Draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* [2] (the Draft Pricing Principles) on 21 August 2009.

Legislative Framework

Under Part XIC of the *Trade Practices Act 1974* (TPA), the ACCC is responsible for arbitrating disputes about access to particular declared services and for assessing access undertakings relating to access to declared services. One of the key issues arising under both processes is the determination of an appropriate access price.

Section 152AQA of the TPA states that the ACCC must determine pricing principles for declared services. The ACCC is required to make pricing principles in writing at the same time or as soon as practicable after a service is declared or varied. [3] Pricing principles may include price-related terms and conditions and may specify prices (the indicative prices). [4]

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[1] ACCC, *Fixed Services Review Declaration Inquiry for the ULLS, LSS, PSTN OA, PSTN TA, LCS and WLR – Final Decision*, July 2009 (FSR Declaration Inquiry).

[2] ACCC, *Draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS*, August 2009 (Draft Pricing Principles).

[3] Subsection 152AQA(3) of the TPA.

[4] Subsection 152AQA(2) of the TPA.

The ACCC must have regard to its pricing principles determination if it is required to arbitrate an access dispute in relation to the same declared service.[5] However, the pricing principles are not binding on the ACCC, and parties to arbitrations are still able to address the ACCC on the relevance and applicability of the principles having regard to the circumstances of their particular dispute. The ACCC considers that, although a party may argue against the principles being applied to its particular case, pricing principles may help guide commercial negotiation of access by providing greater certainty as to the ACCC's views on reasonable access prices.[6]

The determination of pricing principles and indicative prices are intended to increase commercial certainty and provide guidance to the ACCC's regulatory decision making, and express its view of reasonable access prices. In making a determination of final pricing principles, the ACCC is required to publish a draft determination, invite public consultation and consider submissions made during consultation.[7]

Pricing principles

The TPA does not specify the matters the ACCC must consider in making pricing principles. However, the ACCC considers that in making pricing principles it should have regard to the object of Part XIC of the TPA, being the promotion of the long-term interests of end-users (LTIE).[8] In determining whether something promotes the LTIE regard must be had to the extent to which the thing is likely to result in the achievement of the objectives of:

- promoting competition
- any-to-any connectivity, and
- encouraging the economically efficient use of, and the economically efficient investment in, infrastructure.

Therefore, in making pricing principles and indicative price determinations the ACCC may have regard to the above considerations.

Regard to pricing principles in arbitrations

Subsection 152AQA(6) of the TPA requires the ACCC to have regard to the relevant pricing principles determination in setting prices within the context of an access dispute. Subsection 152CR(1) further requires the ACCC to, in making a final determination in access disputes, have regard to a number of relevant legislative matters which are as follows:

- whether the terms and conditions of the final determination will promote the LTIE
- the legitimate business interests of the access provider, and their investment in facilities used to supply the declared service

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5 Subsection 152AQA(6) of the TPA.
6 See *Trade Practices Amendment (Telecommunications) Bill 2001*, pp. 10, 18.
7 Subsection 152AQA(4) of the TPA.
8 Section 152AB of the TPA.

- the interests of all persons who have rights to use the declared service
- the direct costs of providing access to the declared service
- the value to a party of extensions or enhancement of capability whose cost is borne by someone else
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, telecommunications network or facility, and
- the economically efficient operation of a carriage service, telecommunications network or facility.

The ACCC may also have regard to other matters that it thinks relevant.[9]

Indicative Prices

The indicative prices are designed to provide guidance to access providers and access seekers involved in negotiating the terms and conditions of access to services, particularly given they are both taken into account by the ACCC in any arbitration of access disputes. They can also act as a guide to parties considering providing access undertakings to the ACCC for particular services.

Indicative prices provide this guidance by giving parties an idea of the ACCC's views on the appropriate pricing for the declared service.

However the ACCC notes that indicative access prices set out in a determination are non-binding on parties to arbitrations or undertaking assessments. While the ACCC would in general see these access prices as appropriate, it must look at specific issues raised by the parties in particular arbitrations or undertakings, on their individual merits. As such, there will remain the potential for an arbitration determination or an approved undertaking to depart from the indicative prices. In this context, parties to arbitrations and in the assessment of undertakings may make submissions relating to the relevance and applicability of the ACCC's pricing principles having regard to their particular circumstances.

The Inquiry Process

The ACCC released the Draft Pricing Principles setting out its preliminary views on pricing principles and indicative prices on 21 August 2009. In accordance with section 152AQA of the TPA, the Draft Pricing Principles invited submissions to be made until 25 September 2009. However, the timeframe was subsequently extended until 9 October 2009 following several requests from parties. During September and October 2009, the ACCC received submissions from the following parties regarding the Draft Pricing Principles:

- A joint letter from 7 telecommunications companies on 9 September 2009[10]

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9 Subsection 152CR(2) of the Act.

10 Signed by the CEOs of Macquarie Telecom, Optus, iiNet, Primus Telecom and TransACT, and the Managing Directors of Netspace Networks and Internode.

- A letter from Telstra Corporation Ltd (Telstra) on 11 September and further letters of 29 October and 10 November 2009 with submissions attached
- A letter from AAPT Limited (AAPT) dated 14 September 2009 with its submission
- SP Telemedia Limited (SP Telemedia)
- Australian Telecommunications Users Group Limited (ATUG)
- TransACT Capital Communications Pty Ltd (TransACT)
- Nine access seekers represented by Herbert Geer collectively referred to as 'the Access Seekers'[11].
- Macquarie Telecom Pty Limited (Macquarie Telecom) of 9 October, 22 October 2009 and 13 November 2009
- The Competitive Carriers' Coalition (CCC)
- Singtel Optus Pty Limited (Optus)
- Primus Telecom (Primus)

Submissions and supporting materials, including public versions where applicable, have been made available on the ACCC website. A list of submissions received is at Appendix 3.

The above submissions have been considered and are reflected where appropriate in this final determination.

[11] Includes Adam Internet Pty Limited, Agile Pty Limited/Internode Pty Limited, Amcom Pty Limited, Chime Communications Pty Limited/iiNet Limited, EFTel Limited, Netspace Networks Pty Limited, Network Technology (Australia) Pty Limited, TSN Communications/Saunders Properties and Wideband Networks Pty Limited.

2. Proposed telecommunications reforms and the NBN

Telecommunications Legislation Amendment Bill 2009

In the course of the consultation period on the Draft Pricing Principles, the government proposed significant reforms to the telecommunications access regime in the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* which, among other things, proposes replacing the negotiate-arbitrate model with an ex-ante regulatory access framework. The proposed reforms include allowing the ACCC to issue 'access determinations' and adopt 'fixed principles' which are aimed at improving competition and efficiency within telecommunications and promote greater regulatory certainty associated with regulatory processes under Part XIC of the TPA[12]. The proposed reforms include:

- replacing the negotiate-arbitrate model with a streamlined regulatory process and providing the ACCC with the ability to make up-front access determinations on price and non-price terms of access, and
- allowing the ACCC to specify pricing methodologies for declared services which would be used to determine prices over successive regulatory proceedings or successive undertakings in order to create greater regulatory certainty.

Access determinations

Under the proposed reforms Pricing Principle Determinations and Model Terms and Conditions will be replaced by Access Determinations (AD) for each declared service. An AD must be made by the ACCC within certain time frames. In summary, an AD made by the ACCC may[13]:

- deal with any matter between the parties, including terms and conditions of access
- make different provisions with respect to different industry participants (individually or by class)
- may provide for the ACCC to perform functions and exercise powers under the AD
- may include Fixed Principles (see below), and
- must include terms and conditions relating to price or a method of ascertaining price

An AD, under the proposed changes, is made following a public inquiry process (Part 25 of the Telecommunications Act 1997) which must commence within 30 days of a new declaration being made. For existing declared services, the ACCC must commence a public inquiry within 12 months of the commencement of the proposed legislation. Where a service is declared and an AD is already in place, the ACCC must

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12 *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009: Explanatory Memorandum*, September 2009.

13 *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009: Explanatory Memorandum*, September 2009, pp. 140 -141.

commence a public inquiry about whether to make a replacement AD between six and 18 months prior to the expiry of the existing AD. An AD may be displaced by Access Agreements between the relevant parties.

Fixed Principles

The proposed legislation also allows for the development of Fixed Principles including that[14]:

- an original AD may specify a provision to be a fixed principles provision
- a fixed principle provision must specify a nominal termination date (may be later than an expiry date for the determination)
- subsequent 'replacement' ADs that have an expiry date the same or later than the nominal termination date must include the fixed principles provision on the same terms
- a fixed principles provision may specify that it must not be varied, altered or removed; or it may specify the circumstances in which it may be varied, altered or removed (note that there are no current limitations or examples provided in relation to this), and
- a fixed principles provision ceases to be in force when the AD ceases to be in force.

National Broadband Network

The consideration of pricing principles and indicative prices for the fixed services has occurred within the context of the Government's National Broadband Network (NBN). The ACCC notes the Government has proposed a range of options for reforming the telecommunications competition and consumer framework, particularly in the transition to the NBN.

This will have a major impact on the future telecommunications regulatory environment, particularly in relation to the regulation of the fixed services. In the Draft Pricing Principles the ACCC noted that the likely eight year transition period for the NBN will be a time of significant structural and competitive change as the industry moves to an environment where an NBN operates alongside, or possibly instead of, Telstra's fixed network infrastructure. Each of these NBN operating environments could have different implications for the regulation of legacy assets and new telecommunications investments. While the government has established a broad policy framework for the regulation of the NBN company and its access regime details are yet to be finalised.

Industry view

Submissions to the Draft Pricing Principles noted that the roll-out of the NBN and the proposed reforms to the telecommunications access regime in *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* have created significant uncertainty for the industry and have ramifications for both the pricing methodology and the three year period proposed in the draft report. Primus

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[14] *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009: Explanatory Memorandum*, September 2009, pp. 143 -144.

submitted that since the publication of the Draft Pricing Principles, the Government's proposed regulatory reform measures have overtaken the ACCC's process and asks the ACCC to revisit its pricing in light of the changing conditions.[15] Macquarie Telecom adds that the industry is on the cusp of undergoing a period of significant and unprecedented change which is likely to impact on fixed prices.[16]

A number of access seekers cited the impending industry and regulatory reforms in support of their proposals to truncate the life of the proposed indicative prices to one year. The CCC submitted that uncertainty is at a historic high and in such circumstances it would be inappropriate for the ACCC to publish indicative prices for a three year period.[17] Optus had a similar view, adding that to lock in prices for a three year period would be a poor policy decision,[18] and considers that recent significant policy developments should cause the ACCC to pause for thought.[19] The Access Seekers group submitted that it would be in appropriate for prices to extend beyond mid-2011 given the current circumstances.[20]

Optus[21] considered, among other factors, increased uncertainty created by the NBN and proposed regulatory reforms as providing support for its proposal for a more considered, comprehensive review of fixed line prices, or if necessary, a roll-over of current prices. Telstra argued that a rollover of pricing will entail benefits including allowing prices to be re-assessed at a later date when there is more certainty around the NBN and the avoidance of a potential two stage adjustment in the event that the draft legislation is enacted.[22]

ACCC view

The ACCC considers that given the status of the Bill in the current Parliament and the nature of the proposed changes it would be prudent to consider the impact of the proposed legislative changes before it made substantial changes to pricing principles and/or indicative prices for fixed services. The ACCC is mindful that the proposed legislative reform Bill has been introduced but not yet debated in the Senate and that there remains uncertainty as to whether the Bill will be passed in its current form or the nature of any amendments to it.

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15 Primus Telecom, *Submission in response to the ACCC's Draft Report on pricing principles and indicative pricing for fixed line services*, October 2009, p. 9.

16 Macquarie Telecom*, Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS*, October 2009, p. 5.

17 Competitive Carriers' Coalition, *Submission to the draft indicative fixed line prices*, October 2009, p. 2.

18 Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, p. 14.

19 Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, p. 8.

20 Herbert Geer, on behalf of the Access Seekers*, Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, October 2009, p. 3.

21 Optus*, Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, pp. 5 – 6.

22 Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, p. 5 & p. 23.

3. Pricing methodologies for fixed line services

Alternative pricing methods for fixed line services

The Draft Pricing Principles noted that over the last ten years it has become clearer that Telstra's copper customer access network (CAN) has more of the character of an enduring bottleneck, rather than a network subject to bypass through technological and market developments and that there has been little evidence of successful competitive infrastructure deployment. In other words, the copper CAN is likely to be an enduring bottleneck and that one of the main rationales for continual re-valuation of the asset base (that of sending efficient build-or-buy signals) may no longer be appropriate.

The ACCC considers that this is more so given the Government's decision to proceed with the NBN, with significantly greater service potential than the copper CAN. However, the precise nature of the NBN rollout and the extent of the replacement of the copper CAN may not be determined for some time.

The ACCC has previously valued the copper CAN at a forward looking optimised replacement TSLRIC+ cost for access pricing because it considered that estimating TSLRIC+ requires assets to be valued at their economic cost. The forward looking nature of optimised replacement costs is argued to better capture economic costs than either backward looking historic costs or current costs.[23] This is because forward looking replacement costs reflect the ongoing efficient costs of providing a service, which is no more than a firm could expect to recover in a contestable market.

However, the ACCC recognises that there are alternative methods to value sunk infrastructure, the most common of these being:

- historic cost/actual cost — the original cost of acquiring or building the asset
- depreciated historic/actual cost (DHC/DAC) – adjusts the historic cost of an asset by the proportion of these costs that have been recovered
- optimised replacement cost (ORC) – values the asset at the cost of replacing it with a modern equivalent available asset (MEA);
- current replacement cost – how much it would cost to replace the asset in substantially the same form at today's prices (current costs may also be depreciated), and
- depreciated optimised replacement cost (DORC) – values the asset at the cost of replacing it with an asset that is both a) adjusted for the proportion of the service potential of the existing asset that has expired and b) optimised to provide the required service potential in the most efficient way possible.

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[23] ACCC, *Access Pricing Principles in Telecommunications — A Guide*, 1997, p. 41.

Adoption of alternative pricing methodologies (eg. RAB)

The ACCC considers that where fixed network telecommunications infrastructure has the features of an enduring bottleneck, one of the main rationales for TSLRIC+ (to send efficient build-or-buy signals) may no longer be appropriate. The ACCC noted in the Draft Pricing Principles that:

> …in the event of significant changes in the regulatory environment such as might be associated with the NBN during the term of these prices, the ACCC would be open to reconsidering both the pricing principle and the indicative prices for these services. [24]

The Draft Pricing Principles also noted that the ACCC would be open to reconsidering the pricing principles for these services in the future and that the 'build or buy' rationale for continually re-valuing the asset base may not be as strong as initially envisaged.[25]

Industry view

Submissions to the Draft Pricing Principles called for a review of the current approach to pricing and further highlighted issues with elements of the current approach. For example, the CCC submitted that there was an urgent need to move away from TSLRIC:

> …the Commission's proposed discussion paper on a move to a regulated asset base pricing methodology should be released as soon as possible. Further, the Commission should signal that it intends to move from TSLRIC by publishing indicative prices based on the existing methodology for one year only.[26]

Telstra's submission noted that:

> Telstra and the ACCC have both, in submissions to the Government's regulatory review, advocated moving to a regulatory asset base (RAB) approach to access pricing in telecommunications… Moving to new access pricing principles is likely to require an adjustment in prices. Rollover of current indicative prices while this move occurs would give the industry certainty for the time being and permit the ACCC's resources to be focused on developing the RAB. [27]

and similarly 'The Access Seekers' group proposed that:

> TSLRIC+ should be replaced with a locked-in RAB that allows for depreciation. The Access Seekers recognise that it is not possible to quickly alter the current network

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[24] ACCC, *Draft Pricing Principles and Indicative Prices for LCS, WLR, PSTN OTA, ULLS, LSS*, 2009, p.2

[25] ACCC, *Draft Pricing Principles and Indicative Prices for LCS, WLR, PSTN OTA, ULLS, LSS*, 2009, p. 18.

[26] CCC, *Submission to the Draft Indicative Fixed Line Prices*, October 2009, p 4.

[27] Telstra, *Response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS,* October 2009, p. 4.

> costing methodology but nonetheless urge the Commission to implement a more appropriate methodology as early as possible.[28]

In addition, Optus stated that:

> The ACCC has recognised it is "highly likely" that the basic rationale for its TSLRIC+ pricing methodology — or more precisely the valuation of network assets at full replacement cost — no longer exists. Optus strongly agrees and this will form the central argument developed in this submission…Optus will strongly argue that any future pricing decision for fixed line access services should value Telstra's assets in a more realistic manner.[29]

Telstra
In the context of justifying a roll-over of current pricing, Telstra noted in its submission that it has, in submissions to the Government's regulatory review, advocated moving to a RAB approach to access pricing in telecommunications.[30]

Optus
Optus considers that the rationale for TSLRIC+ pricing methodology no longer exists, supports a move to a 'depreciated optimised replacement cost' (DORC) methodology and urged the ACCC to commence a more comprehensive assessment of fixed line access prices. Optus submits that instead of modelling the replacement cost, the pricing approach should take account of the age of Telstra's network assets and value the assets according to DORC. Optus also argued that the ACCC should explore the option of modelling the cost of a modern optical fibre network which it submits is the realistic technological choice of a new entrant infrastructure competitor. [31]

Access seekers
A number of access seekers express strong support for the implementation of a RAB pricing methodology approach as soon as possible. The CCC urged the ACCC to set prices on TSLRIC methodology for one year only and release a discussion paper on the proposed move to a RAB methodology as soon as possible,[32] a view echoed in Macquarie Telecom's submission.[33] The CCC also provided a consultants report on setting the regulatory asset base for the fixed network.

Similarly, AAPT considers that the one year period it advocates for the proposed prices provides the ACCC with time to settle its views on which form of RAB to

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[28] Herbert Geer, on behalf of the Access Seekers, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, October 2009, p 10.

[29] Optus, *Optus Submission to Australian Competition and Consumer Commission in response to draft determination on Pricing Principles and Indicative Prices for Fixed Line Services*, October 2009, pp. 4 -5.

[30] Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, p. 4.

[31] Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, pp. 4 – 6.

[32] Competitive Carriers' Coalition, *Submission to the draft indicative fixed line prices*, October 2009, p. 4.

[33] Macquarie Telecom, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS*, October 2009, p. 3.

use.[34] The Access Seekers group also urged the ACCC to move as early as possible to a locked-in RAB pricing methodology and noted that the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* provides the opportunity for the ACCC to reassess its pricing methodology in the lead up to the NBN.[35]

ACCC view

The ACCC has for some time noted the limitations of a TSLRIC approach to the pricing of fixed network legacy services and has expressed that view in a number of recent decisions and consultations. However, whilst the underlying rationale for the use of TSLRIC may be questioned in the context of legacy services the cost based approach to determining prices remains valid.

The ACCC, at the same time as publishing this determination is releasing a discussion paper *Review of 1997 Guide to Telecommunications Access Pricing Principles for fixed line service*s. The discussion paper recognises that both the telecommunications regulatory, technological and competitive landscape, and the ACCC's experience in regulating the prices of fixed line telecommunications access services, have changed and continue to evolve. It also recognises the extensive debate among industry participants regarding the appropriate approach to determining access pricing for fixed line telecommunications services. The ACCC has in particular noted its view that, when setting regulated access prices, regulatory certainty would be promoted if the value of the assets used to provide the regulated services was locked-in, rather than continually re-valued at each regulatory reset.[36] It has also noted that the 'build or buy' rationale for continually re-valuing the asset base may not be as strong as initially envisaged.[37]

The ACCC acknowledges that the choice of access framework, either the current negotiate-arbitrate model or the ex-ante regulatory access framework (as proposed in the government's legislative reform package — *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009)*[38] — is subject to ongoing consideration. This may have implications for the manner in which (and possibly the extent to which) any changes in the conceptual approach to pricing could be implemented. However, the ACCC considers that there would be scope to implement at least some changes regardless of the process by which regulated access prices will ultimately be set over the longer term. The ACCC considers that it would be appropriate to rollover existing prices while it considers alternate methodologies for valuing the fixed services.

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[34] AAPT, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS* (public), October 2009, p. 7.

[35] Herbert Geer, on behalf of the Access Seekers, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, October 2009, p. 10.

[36] ACCC, Submission to the Department of Broadband, Communications and the Digital Economy *National Broadband Network: Regulatory Reform for 21st Century Broadband*, June 2009.

[37] ACCC, ACCC's *Draft Pricing Principles and Indicative Prices for LCS, WLR, PSTN OTA, ULLS and LSS*, August 2009, p. 18.

[38] Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009: Explanatory Memorandum, September 2009.

Analysys, TEA and Specific Costs cost models

Although many submissions raised concerns over the indicative prices, including the use of TSLRIC+ methodology and the weighting given to the Analysys cost model results compared to other inquiry material, only Optus, Telstra and Primus provided relatively detailed critiques of the inputs and assumptions of the models.

Industry view

Telstra

Telstra claims there are several high level deficiencies in the Analysys cost model including that it fails to take into account actual conditions or basic engineering principles, it contains manifest errors, omits necessary equipment and uses an inappropriate positive tilted annuity approach. Telstra considers therefore that the Analysys cost model greatly underestimates the efficient cost of providing various services and cannot reasonably be relied on. In contrast, Telstra submits that the TEA model provides a more credible, robust basis for determining prices because it uses more accurate data.[39]

In its submission (and subsequent letters)[40] Telstra describes the errors it claims exist in the Analysys cost model. Telstra, however submits that many of the identified deficiencies in the Analysys cost model are capable of correction and provides comprehensive proposals as to how these deficiencies can be addressed and the resulting prices generated by a 'Telstra adjusted' Analysys cost model.[41]

Telstra further submits that the ACCC's Specific Costs model understates the specific costs relating to the ULLS and LSS services[42] and provides a confidential justification of its contention.[43]

Optus

Optus submits that the Analysys cost model and the TEA model estimate asset values based on the hypothetical replacement cost of a predominantly copper network. Optus considers that a new entrant would be far more likely to enter with a modern network based on optical fibre and therefore build a much more efficient network. Optus concludes that access prices produced by the models will be above the 'efficient upper bound' and run the risk of encouraging inefficient investment.[44]

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39 Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, pp. 3 - 4.

40 Telstra letter and attachment of 29 October 2009 & Telstra letter and attached NERA Report of 10 November 2009.

41 Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, pp. 7 – 10 & Attachment A.

42 Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, p. 42.

43 Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (confidential), October 2009, Attachment D.

44 Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, p. 84 & p. 32.

Optus further considers that the prices produced by the Analysys cost model are inflated because some of the input parameters are inappropriate. Optus submits that if the ACCC is to set prices based on modelling a predominantly copper network without taking into account the age of the assets, it must make significant adjustments to the assumptions used in order to minimise the distortion to competition and windfall gains to Telstra that would otherwise ensue.[45] To this end, Optus outlines modifications to model inputs that it advocates, if implemented, would reduce the extent of cost over-recovery by Telstra.[46]

Primus

Primus's submission provides a further assessment of the Analysys cost model. Primus notes several defects of the model that it considers should be addressed. For instance, Primus notes that the model has not included revenue from other users of duct space, makes incorrect assumptions concerning copper life and makes an erroneous assumption that there is a requirement to support ADSL across all copper pairs in the network.[47] Primus requests the ACCC reconsider its pricing in light of these and other concerns, suggesting that the errors have generated prices unduly favourable to Telstra.

ACCC view

The ACCC considers the Analysys cost model to be a robust model that effectively models an efficient network for fixed services. The ACCC does not necessarily agree with all of Telstra's contentions as to the applicability of its suggested modifications to the model. However, the ACCC has engaged Analysys Mason to conduct further work on the model.

Use of International Benchmarking

Telstra considers that the international benchmarking used by the ACCC fails to take into account fundamental differences between Australia and the benchmarked countries and has provided consultant's reports reviewing the ACCC's international benchmarking in support of its criticisms. Telstra submitted that the noted deficiencies in the international benchmarking conducted on behalf of the ACCC renders it unreliable for use in assessing the reasonableness of cost estimates and the proposed indicative prices.[48]

A number of access seekers endorse the use of international benchmarking as an input into determining indicative prices, however concerns were raised that the ACCC has placed too little weight on the results of international benchmarking and relied too heavily on the outputs of the Analysys cost model. AAPT submitted that the ACCC has made an error by placing too much emphasis on the outputs of the Analysys cost

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45 Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, p. 81.

46 Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, pp. 81 – 88.

47 Primus Telecom, *Submission in response to the ACCC's Draft Report on pricing principles and indicative pricing for fixed line services*, October 2009, pp. 5 – 9.

48 Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, p. 3 & pp. 13 – 14.

model despite the fact that in some cases the outputs are not sufficiently validated by international benchmarking.[49]

This view is echoed in submissions from the CCC[50] and Primus who remark that the ACCC has 'erroneously overlooked the benchmarking data in deference to reliance on a flawed TSLRYIC+ (sic) methodology.'[51] TransACT submits that all relevant enquiry material considered by the ACCC, including international benchmarking should apply an appropriate weight of input, in conjunction with the Analysys cost model when determining final access prices.[52] AAPT suggests that where cost model estimates are significantly greater than international benchmarks, more emphasis should be placed on the international benchmarks.[53]

AAPT, Optus, TransACT[54] and Macquarie Telecom identify WLR and ULLS as the services where the indicative prices appear to have been set with insufficient regard to international benchmarks. AAPT notes that WLR and ULLS cost estimates are not validated by international benchmarks, while LCS, PSTN OTA and LSS are validated by international benchmarks.[55] Optus submits that the proposed ULLS pricing is well in excess of comparable international benchmark rates and suggests that the ACCC should bring its final ULLS pricing into line with the international benchmarks.[56] Macquarie Telecom suggests that the ACCC should revisit its indicative prices for ULLS and WLR, particularly in respect of the weighting it has given to benchmark prices for these services.[57]

ACCC view

The ACCC is of the view that international cost benchmarking is a useful input in determining the cost of supplying fixed services. In using benchmarked data, account must be taken of differences between benchmarked countries. Many of the adjustments that need to be considered include network considerations (usage and scale), geography, vertical/horizontal integration, population density, land and labour costs, the use of different technology, retail prices, scope of services offered and the quality of services offered. The ACCC has considered these in the context of the weighting given to benchmark analysis in consideration of these pricing principles.

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49 AAPT, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS* (public), October 2009, p. 3.

50 Competitive Carriers' Coalition, *Submission to the draft indicative fixed line prices*, October 2009, p. 2.

51 Primus Telecom, *Submission in response to the ACCC's Draft Report on pricing principles and indicative pricing for fixed line services*, October 2009, p. 4.

52 TransACT Capital Communications, *Submission on draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, October 2009, p. 7.

53 AAPT, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS* (public), October 2009, p. 8.

54 TransACT Capital Communications, *Submission on draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, October 2009, p. 4.

55 AAPT, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS* (public), October 2009, p. 9.

56 Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line services* (public), October 2009, p. 49.

57 Macquarie Telecom, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS*, October 2009, p. 10.

4. Rollover of current indicative prices

Given the uncertainty surrounding the government's legislative reform package – the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* – and debate over the continued applicability of the TSLRIC methodology for these services the prospect of rolling over current indicative prices was raised in submissions to the Draft Pricing Principles. The key rationale was to provide a degree of industry certainty on access pricing whilst legislative processes were finalised and uncertainties surrounding the NBN clarified.

Industry views

Telstra
In its submission to the Draft Pricing Principles, Telstra proposed that should the ACCC reject *its* proposed indicative prices, a rollover of all of the current indicative prices as a package for the next 12 months would be appropriate.[58] Telstra submitted that this option had several benefits which include; enabling errors in the Analysys cost model that Telstra has identified to be addressed; providing certainty and minimising pricing adjustments to industry as a RAB pricing approach is developed and implemented and allowing for pricing to be re-assessed when there is more certainty around the NBN.[59]

Optus
Optus submitted that the ACCC should commence a more comprehensive assessment of fixed line access prices, and following the completion of this assessment, should be in a position to set prices for future periods and also retrospectively to close off current access disputes. However, should the ACCC proceed with determining prices at this time, Optus recommends the ACCC roll-over its previous pricing determination until 30 June 2010. Optus notes that the existing ULLS prices are broadly consistent with the cost estimates for a depreciated network, a forward-looking optical fibre network and international benchmarks. [60]

Macquarie
On 13 November Macquarie Telecom[61] wrote to the ACCC in relation to the proposed rollover of indicative prices. Macquarie Telecom submitted that a rollover of indicative prices was not appropriate and would be disadvantageous to access seekers who have reached agreements with Telstra that adopt lower prices than the 2008-2009 indicative prices. As a remedy, Macquarie Telecom proposed that the ACCC rollover 2008-2009 prices by implementing a 'no worse off' principle to protect the interests

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[58] Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, p. 4 & pp. 22 - 23.
[59] Telstra, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public), October 2009, pp. 4 – 5.
[60] Optus, *Submission in response to draft determination on pricing principles and indicative prices for fixed line service*s (public), October 2009, p. 6.
[61] Macquarie Telecom, *Setting Indicative Prices for Fixed Services*, 13 November 2009

of these access seekers. Macquarie Telecom submit that this would ensure that existing commercially agreed prices would be the de facto indicative price should the 2008-2009 rolled-over indicative price for a particular service be higher. Should the ACCC adopt this proposal, Macquarie Telecom support the rollover of prices until 31 December 2010.

Access seekers
No other submitters raised or commented directly on the prospect of a roll over of current indicative prices in the context of submissions to the Draft Pricing Principles.

Timing of proposed pricing principles and indicative prices

The Draft Pricing Principles proposed a timeframe for indicative prices of 3 years This was consistent with the time periods adopted in the Analysys cost model and the extension of the declaration of the fixed services for the maximum term (until 2014). However, a number of submissions to the Draft Pricing Principles considered this time period too long and, in general submitted that should indicative prices be set they should be for a much shorter period.

Telstra
As noted above, Telstra submitted that the ACCC should roll over current indicative prices for a period of 12 months if the ACCC rejected Telstra's proposed pricing.

Optus
Optus expressed support of a roll over of the previous pricing determination until 30 June 2010.

Access seekers
While access seekers (apart from Optus) did not address roll over specifically, a number of access seekers submitted that the proposed period for the application of the indicative prices was too long. Noting the proposed significant changes to the telecommunications regulatory regime, AAPT, Primus, the CCC and Macquarie Telecom[62] suggested that prices should apply for one year only, expiring 30 June 2010. Similarly, the Access Seekers group submitted that in light of the impending legislative reforms, it would be inappropriate for the proposed pricing to extend beyond mid-2011.[63]

ACCC view

The ACCC considers that the roll over of 2008-09 indicative prices (including connection charges) would have a number of benefits and be in the LTIE.

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62 AAPT, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS* (public), October 2009, pp.7-8, Primus Telecom, *Submission in response to the ACCC's Draft Report on pricing principles and indicative pricing for fixed line services*, October 2009, p.9, Competitive Carriers' Coalition, *Submission to the draft indicative fixed line prices*, October 2009, p.4, Macquarie Telecom, *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS*, October 2009, p.5.

63 Herbert Geer, on behalf of the Access Seekers, *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, October 2009, p. 3.

Industry has indicated in submissions that given the Government's introduction of significant legislative reforms, the uncertainty surrounding the introduction of the NBN and a desire to shift to a more appropriate pricing methodology for valuing fixed line services the industry would benefit from a period of pricing certainty through the roll over of existing pricing principles and indicative prices for the period 1 August 2009 until 31 December 2009.

The roll over of pricing principles and indicative prices is intended to be an interim measure to provide some certainty to industry whilst the parliament considers the proposed telecommunications reform bill. This would provide industry with a greater level of certainty in the short to mid term until the final outcome of the proposed legislative changes are known. It also enables the ACCC time to assess the implications of any legislative changes.

Roll over will also enable the ACCC to consult with industry on its review of access pricing principles for fixed line services. A number of submissions noted the inapplicability of TSLRIC pricing to legacy fixed line services in an NBN context and actively supported a shift to an alternate pricing methodology. While many support a shift to a RAB approach the ACCC considers that such a change would involve substantial industry consultation that may take some time. However, the ACCC would prefer to settle on an appropriate methodology as soon as possible. Setting new pricing principles and indicative prices at this stage is not likely to promote industry certainty.

In addition, rolling over current prices is likely to minimize the level of any pricing disruption caused during the consideration of alternative pricing methodologies for fixed line services (such as a RAB approach). Rolling over current prices would allow for a smoother transition to pricing based on alternative methodologies.

The ACCC remains mindful that under the TPA it is required to have regard to the relevant pricing principles determination in setting prices within the context of an access dispute. To date, the ACCC has not departed from published indicative prices in relevant arbitrations.

However, the ACCC recognises that the current circumstances for these pricing principles are unusual, and therefore it is important to reiterate that the indicative access prices set out in a determination are non-binding on parties to arbitrations or undertaking assessments. While the ACCC would continue to see indicative prices as an appropriate starting point, the ACCC would still take into account any further and better information that comes to hand during the term of this determination which it would consider relevant to any dispute. Any move to a RAB approach to valuing assets would be likely to generate such further and better information. As such, the ACCC reserves the right to reconsider prices should it secure better information.

Rolling over pricing principles will also enable the ACCC to undertake more refinement of the Analysys cost model's valuation of fixed line services. Telstra's submission to the Draft Pricing Principles noted a number of potential errors in the Analysys modelling which will require further investigation by the ACCC. This is likely to take some time, however, the ACCC maintains its views that the robustness of the Analysys model is an appropriate tool to cost fixed line services.

5. Conclusion on Pricing Principles and Indicative Prices

The ACCC considers that rolling over 2008-09 pricing principles and indicative prices will provide certainty regarding access to regulated services in a period of potential legislative change and achieves the objective of promoting the LTIE. The ACCC notes that the likely eight year transition period for the NBN will be a time of significant structural and competitive change and that even at this early stage industry requires some certainty as to interim pricing while the details of the proposed legislative reform package are considered. Roll over of pricing will also assist both access seekers and access providers in aligning business plans to the ongoing development of the NBN and give some certainty in terms of pricing for fixed services in the short term. The ACCC also notes that the legislation introduced into parliament during the course of these consultations has the potential to fundamentally alter the way in which pricing decisions for regulated services are made. While the ACCC has traditionally used a forward looking TSLRIC+ as a preferred pricing methodology, the ACCC is open to consider alternative pricing approaches.

The ACCC acknowledges submissions that indicate there is a need for clear direction on pricing to apply now and that there are a large number of active disputes, some of which have been ongoing for a considerable period. There is also potential for new disputes as access seekers renew contracts. In light of potential legislative changes, the ability to provide indicative pricing guidance could end, as the current negotiate-arbitrate model is potentially replaced by an upfront pricing model under the proposed new access determinations.

Some submissions sought either higher or lower prices than what the ACCC had proposed in the Draft Pricing Principles. There was concern expressed as to the applicability of both the Analysys cost model and the TEA model, within the context of a forward looking TSLRIC+ approach, to assets that are not replicable and that are revalued at every regulatory reset.

The ACCC is of the view that it would not be appropriate, on the information currently available to it, to adopt any particular alternative price terms that submissions have advocated. It did emerge from industry submissions, however, that if the ACCC did not support either higher or lower prices in line with access seekers or access providers own respective commercial interests, then it would be preferable for the ACCC to maintain the status quo for pricing until 2010 and for the ACCC to undertake a more fundamental review to apply to pricing decisions. In the current circumstances the ACCC considers that it should adopt this approach.

The ACCC notes that there is continuing investment in DSL networks under the current approach to pricing but that new investment decisions may be impacted by uncertainty over pricing. The ACCC considers that rolling over current prices until the end of 2010 is in the LTIE as it is unlikely to disrupt competition in the market for fixed line services as access seekers will have well known pricing principles and indicative prices in place to guide negotiations for access to key services. Rolling over indicative prices is also likely to maintain efficient investment in infrastructure and will allow current investment plans to play out.

While the ACCC has some concerns around the level of pricing and possible effect on productive and allocative efficiency, these effects are of a lesser order due to the limited period for which the prices will apply. The proposed prices do not unfairly affect one group of service providers over another as the entire package of prices are to be extended.

The ACCC considers that to provide certainty to industry while new legislation is debated and alternative pricing approaches are explored, rolling over the 2008-09 indicative prices for fixed services will help to guide industry when negotiating the terms and conditions of access. This should also help minimise potential pricing disruptions should the ACCC move toward adopting alternative pricing methodologies during this period.

Appendix 1. Pricing Principles Determinations

This Appendix contains the pricing principles determinations for:

- LCS
- WLR
- PSTN OTA
- LSS
- ULLS

Pricing Principles for the Local Carriage Service (LCS) Determination 2009

Trade Practices Act 1974

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this Determination under section 152AQA of the *Trade Practices Act 1974*.

Dated December 2009

Graeme Samuel
Chairman

Australian Competition and Consumer Commission

1 Name of Determination

This Determination is the *Pricing Principles for the Local Carriage Service (LCS) Determination 2009.*

2 Commencement

This Determination commences on the day it is made.

Note: The Australian Competition and Consumer Commission must have regard to this Determination if it is required to arbitrate an access dispute under Division 8 of the *Trade Practices Act 1974* in relation to the declared services covered by this Determination (see subsection 152AQA(6)). An arbitral determination may be backdated (see section 152DNA).

3 Pricing principles and indicative prices

The pricing principles specified in Schedules 1, 3 and 5 and the indicative prices specified in Schedules 2, 4 and 6 are to apply to the Local Carriage Service (***LCS***) declared by the Australian Competition and Consumer Commission (***Commission***) under section 152AL of the *Trade Practices Act 1974* (***Act***).

4 Repeal of earlier Pricing Principles Determinations for the LCS

This Determination repeals the following instruments:

- *Pricing Principles for the Local Carriage Service, Wholesale Line Rental Service and Public Switched Telephone Originating and Termination Services* dated 29 November 2006;

- *Pricing Principles for the Local Carriage Service and the Wholesale Line Rental Service* dated 30 July 2008; and

- any earlier Pricing Principles Determinations made for the LCS.

Schedule 1 Pricing principles for the LCS for the period to 31 December 2007

An interim retail-minus-retail-costs (***RMRC***) pricing principle should be adopted until the Commission has a robust cost model available. In implementing the interim RMRC pricing principle, the Commission will use:

- avoidable retail costs for the LCS rather than avoided retail costs;

- unbundled benchmark retail prices; and

- separate pricing of the LCS.

The Commission will seek to implement a cost-based pricing approach once a robust cost model, capable of producing reliable estimates of costs in all geographic regions, is available.

Schedule 2 Indicative prices for the LCS for the period to 31 December 2007

The indicative prices for the LCS for the period to 31 December 2007 are:

	Local Calls
Telstra Retail Prices	20c ex GST
Unit Avoidable Retail Costs	2.29c/call
GST Adjustment	0.21c
Indicative Price	17.92c

Schedule 3 Pricing principles for the LCS for the period 1 January 2008 to 31 July 2009

An RMRC pricing principle should be adopted until the Commission has a robust cost model available. In implementing the interim RMRC pricing principle, the Commission will use:

- avoidable retail costs for the LCS rather than avoided retail costs;
- unbundled benchmark retail prices; and
- separate pricing of the LCS.

The Commission will seek to implement a cost-based pricing approach once a robust cost model, capable of producing reliable estimates of costs in all geographic regions, is available.

Schedule 4 Indicative prices for the LCS for the period 1 January 2008 to 31 July 2009

The indicative prices for the LCS for the period from 1 January 2008 to 31 July 2009 are:

	Local Calls
Telstra Retail Prices	20c ex GST
Unit Avoidable Retail Costs	2.90c/call
GST Adjustment	0.26c
Indicative Price	17.36c

Schedule 5 Pricing principles for the LCS for the period 1 August 2009 to 31 December 2010

An RMRC pricing principle should be adopted until the Commission has a robust cost model available. In implementing the interim RMRC pricing principle, the Commission will use:

- avoidable retail costs for the LCS rather than avoided retail costs;
- unbundled benchmark retail prices; and
- separate pricing of the LCS.

The Commission will seek to implement a cost-based pricing approach once a robust cost model, capable of producing reliable estimates of costs in all geographic regions, is available.

Schedule 6 Indicative prices for the LCS for the period 1 August 2009 to 31 December 2010

The indicative prices for the LCS for the period 1 August 2009 to 31 December 2010 are:

	Local Calls
Telstra Retail Prices	20c ex GST
Unit Avoidable Retail Costs	2.90c/call
GST Adjustment	0.26c
Indicative Price	17.36c

Pricing Principles for the Wholesale Line Rental (WLR) Determination 2009

Trade Practices Act 1974

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this Determination under section 152AQA of the *Trade Practices Act 1974*.

Dated December 2009

Graeme Samuel
Chairman

Australian Competition and Consumer Commission

1 Name of Determination

This Determination is the *Pricing Principles for the Wholesale Line Rental Service (WLR) Determination 2009.*

2 Commencement

This Determination commences on the day it is made.

Note: The Australian Competition and Consumer Commission must have regard to this Determination if it is required to arbitrate an access dispute under Division 8 of the *Trade Practices Act 1974* in relation to the declared services covered by this Determination (see subsection 152AQA(6)). An arbitral determination may be backdated (see section 152DNA).

3 Pricing principles and indicative prices

The pricing principles specified in Schedules 1, 3 and 5 and indicative prices specified in Schedules 2, 4 and 6 are to apply to the Wholesale Line Rental

(***WLR***) declared by the Australian Competition and Consumer Commission (***Commission***) under section 152AL of the *Trade Practices Act 1974* (***Act***).

4 Repeal of earlier Pricing Principles Determinations for the WLR

This Determination repeals the following instruments:

- *Pricing Principles for the Local Carriage Service, Wholesale Line Rental Service and Public Switched Telephone Originating and Termination Services* dated 29 November 2006; and
- *Pricing Principles for the Local Carriage Service and the Wholesale Line Rental Service* dated 30 July 2008.

Schedule 1 Pricing principles for the WLR for the period to 31 December 2007

An interim retail-minus-retail-costs (***RMRC***) pricing principle should be adopted until the Commission has a robust cost model available. In implementing the interim RMRC pricing principle, the Commission will use:

- avoidable retail costs for the WLR rather than avoided retail costs;
- unbundled benchmark retail prices; and
- separate pricing of the WLR.

The Commission will seek to implement a cost-based pricing approach once a robust cost model, capable of producing reliable estimates of costs in all geographic regions, is available.

Schedule 2 Indicative prices for the WLR for the period to 31 December 2007

The indicative prices for the WLR for the period to 31 December 2007 are:

	HomeLine Part	**BusinessLine Part**
Telstra Retail Prices	\$29.05	\$31.77
Unit Avoidable Retail Costs	\$5.93/mth	\$5.93/mth
Indicative Price	\$23.12	\$25.84

Schedule 3 Pricing principles for the WLR for the period 1 January 2008 to 31 July 2009

An RMRC pricing principle should be adopted until the Commission has a robust cost model available. In implementing the interim RMRC pricing principle, the Commission will use:

- avoidable retail costs for the WLR rather than avoided retail costs;
- unbundled benchmark retail prices; and
- separate pricing of the WLR.

The Commission will seek to implement a cost-based pricing approach once a robust cost model, capable of producing reliable estimates of costs in all geographic regions, is available.

Schedule 4 Indicative prices for the WLR for the period 1 January 2008 to 31 July 2009

The indicative prices for the WLR for the period 1 January 2008 to 31 July 2009 are:

	HomeLine Part	**BusinessLine Part**
Telstra Retail Prices	$30.41 ex GST	$31.77 ex GST
Unit Avoidable Retail Costs	$4.84/mth	$4.84/mth
Indicative Price	$25.57	$26.93

Schedule 5 Pricing principles for the WLR for the period 1 August 2009 to 31 December 2010

An RMRC pricing principle should be adopted until the Commission has a robust cost model available. In implementing the interim RMRC pricing principle, the Commission will use:

- avoidable retail costs for the WLR rather than avoided retail costs;
- unbundled benchmark retail prices; and
- separate pricing of the WLR.

The Commission will seek to implement a cost-based pricing approach once a robust cost model, capable of producing reliable estimates of costs in all geographic regions, is available.

Schedule 6 Indicative prices for the WLR for the period 1 August 2009 to 31 December 2010

The indicative prices for the WLR for the period 1 August 2009 to 31 December 2010 are:

	HomeLine Part	**BusinessLine Part**
Telstra Retail Prices	\$30.41 ex GST	\$31.77 ex GST
Unit Avoidable Retail Costs	\$4.84/mth	\$4.84/mth
Indicative Price	\$25.57	\$26.93

Pricing Principles for the Public Switched Telephone Network Originating Access and Terminating Access Services (PSTN OTA) Determination 2009

Trade Practices Act 1974

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this Determination under section 152AQA of the *Trade Practices Act 1974*.

Dated December 2009

Graeme Samuel
Chairman

Australian Competition and Consumer Commission

1 Name of Determination

This Determination is the *Pricing Principles for the Public Switched Telephone Network Originating Access and Terminating Access Services (PSTN OTA) Determination 2009.*

2 Commencement

This Determination commences on the day it is made.

Note: The Australian Competition and Consumer Commission must have regard to this Determination if it is required to arbitrate an access dispute under Division 8 of the *Trade Practices Act 1974* in relation to the declared services covered by this Determination (see subsection 152AQA(6)). An arbitral determination may be backdated (see section 152DNA)

3 Pricing principles and indicative prices

The pricing principles specified in Schedules 1 and 3 and indicative prices specified in Schedules 2 and 4 are to apply to the Public Switched Telephone Network Originating Access and the Public Switched Telephone Network Terminating Access Services (***PSTN OTA***) declared by the Australian Competition and Consumer Commission (***Commission***) under section 152AL of the *Trade Practices Act 1974* (***Act***).

4 Repeal of earlier Pricing Principles Determination for the PSTN OTA

This Determination repeals the following instruments:

- *Pricing Principles for the Local Carriage Service, Wholesale Line Rental Service and Public Switched Telephone Originating and Termination Services* dated 29 November 2006; and
- any earlier Pricing Principles Determinations made for the PSTN OTA.

Schedule 1 Pricing principles for the PSTN OTA for the period to 31 December 2007

The price of the PSTN OTA Service should be determined on the basis of a total service long run incremental cost (***TSLRIC***).

Schedule 2 Indicative prices for the PSTN OTA for the period to 31 December 2007

The indicative prices for the PSTN OTA for the period to 31 December 2007 are:

2006-07	*Flagfall*	*EMOU charge*	*Headline rate*
CBD	0.85	0.35	0.57
Metropolitan	0.84	0.49	0.70
Provincial	0.94	0.68	0.91
Rural	2.06	3.66	4.18
Average	**0.95**	**0.76**	**1.00**

Schedule 3 Pricing principles for the PSTN OTA for the period 1 August 2009 to 31 December 2010

The price of the PSTN OTA Service should be determined on the basis of a total service long run incremental cost (TSLRIC).

Schedule 4 Indicative prices for the PSTN OTA for the period 1 August 2009 to 31 December 2010

The indicative prices for PSTN OTA for the period 1 August 2009 to 31 December 2010 are:

1 August 2009 – 31 December 2010	*Flagfall*	*EMOU charge*	*Headline rate*
CBD	0.85	0.35	0.57
Metropolitan	0.84	0.49	0.70
Provincial	0.94	0.68	0.91
Rural	2.06	3.66	4.18
Average	**0.95**	**0.76**	**1.00**

Pricing Principles for the Unconditioned Local Loop Service (ULLS) Determination 2009

Trade Practices Act 1974

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this Determination under section 152AQA of the *Trade Practices Act 1974*.

Dated December 2009

Graeme Samuel
Chairman

Australian Competition and Consumer Commission

1 Name of Determination

This Determination is the *Pricing Principles for the Unconditioned Local Loop Service (ULLS) Determination* 2009.

2 Commencement

This Determination commences on the day it is made.

Note: The Australian Competition and Consumer Commission must have regard to this Determination if it is required to arbitrate an access dispute under Division 8 of the *Trade Practices Act 1974* in relation to the declared services covered by this Determination (see subsection 152AQA(6)). An arbitral determination may be backdated (see section 152DNA).

3 Pricing principles and indicative prices

The pricing principles specified in Schedules 1 and 3 and indicative prices specified in Schedules 2 and 4 are to apply to the Unconditioned Local Loop Service (*ULLS*) declared by the Australian Competition and Consumer Commission (Commission) under section 152AL of the *Trade Practices Act 1974* (*Act*).

4 Repeal of earlier Pricing Principles Determinations for the ULLS

This Determination repeals the following instrument:

- *Pricing Principles for the Unconditioned Local Loop Service* made 21 November 2007 and subsequently amended by *Pricing Principles for the Unconditioned Local Loop Service Amendment Determination 2008 (No. 1)* on 16 June 2008; and
- any earlier Pricing Principles determinations for the ULLS.

Schedule 1 Pricing principles for ULLS for the period to 31 July 2009

The Commission's pricing principles for the ULLS for the period to 31 July 2009 are:

- a TSLRIC+ pricing principle should be applied to the ULLS;
- a specific cost component should be included in the ULLS monthly price, calculated by combining 'ULLS specific costs' with 'LSS specific costs' and Telstra's internal equivalent costs for ADSL, and allocating those costs across the number of active ULLS, LSS and ADSL lines;
- the ULLS charges should be geographically de-averaged; and
- connection charges should be set with reference to the amounts charged by third party contractors to Telstra for jumpering work in exchanges, indirect costs and back-of-house costs.

Schedule 2 Indicative prices for the ULLS for the period to 31 July 2009

ULLS Monthly Charges

The indicative prices for ULLS monthly charges on a per service per month basis for Bands 1, 2 and 3 for the period to 31 July 2009 are:

Band	Until 30 June 2006	2006-07	2007-08	1 July 2008 – 31 July 2009
1	$ 5.60	$ 6.00	$ 6.20	$ 6.60
2	$ 12.30	$ 13.70	$ 14.30	$ 16.00
3	$ 25.00	$ 27.30	$ 28.50	$ 31.30

Note: No indicative price is set for Band 4.

ULLS Single Connection Charges – In use ULLS and Transfer ULLS connections

The indicative prices for ULLS Single Connection Charges (In-use ULLS and Transfer ULLS connections) for the period to 31 July 2009 are:

Band	Until 30 June 2006	2006-07	2007-08	1 July 2008 – 31 July 2009
1	$ 38.10	$ 44.00	$ 50.10	$ 50.40
2	$ 43.10	$ 47.80	$ 52.80	$ 53.10
3	$ 51.50	$ 54.10	$ 57.40	$ 57.70

Note: No indicative price is set for the ULLS in Band 4.

Note: No indicative price is set for a Vacant ULLS connection.

Charges for ULLS Managed Network Migration – involving the transfer of end user data services from a Telstra wholesale PSTN and/or ADSL service, or from a line that Telstra is using to supply a ULLS to another access seeker ('MNM')

The indicative prices for ULLS connections in an MNM for the period to 31 July 2009 are:

Component	Until 30 June 2006	2006-07	2007-08	1 July 2008 – 31 July 2009
– Fixed amount (per MNM)	$126.00	$130.20	$ 135.60	$ 138.00
– Variable amount (per connection)	+ $24.30	+ $24.60	+ $ 24.90	+ $ 25.00

The indicative prices for the cancellation of a ULLS order that was to be connected as part of a MNM are:

- $20 per service on which pre-jumpering has occurred;
- plus, in those cases where the entire MNM scheduled for the exchange is cancelled, an additional charge per MNM that equals the fixed amount that was payable in respect of that MNM.

ULLS MNM minimum exchange charge

The indicative prices for the minimum exchange charge per MNM are:

	Until 30 June 2006	2006-07	2007-08	1 July 2008 – 31 July 2009
Per exchange	$612.00	$622.20	$ 633.60	$ 638.00

ULLS Call Diversion Charges

The indicative prices for the initial connection/activation of ULLS call diversion for the period to 31 July 2009 are:

Component	Until 30 June 2006	2006-07	2007-08	1 July 2008 – 31 July 2009
– Fixed amount (per ULLS call diversion)	$ 8.50	$ 8.80	$ 9.20	$ 9.30
– Variable amount (pro rata per month)	$12.50	$12.50	$12.50	$12.50

Schedule 3 Pricing principles for the ULLS for the period 1 August 2009 to 31 December 2010

The Commission's pricing principles for the ULLS for the period 1 August 2009 to 31 December 2010 are:

- a TSLRIC+ pricing principle should be applied to the ULLS;
- a specific cost component should be included in the ULLS monthly price, calculated by combining 'ULLS specific costs' with 'LSS specific costs' and Telstra's internal equivalent costs for ADSL, and allocating those costs across the number of active ULLS, LSS and ADSL lines;
- the ULLS charges should be geographically de-averaged; and
- connection charges should be set with reference to the amounts charged by third party contractors to Telstra for jumpering work in exchanges, indirect costs and back-of-house costs.

Schedule 4 Indicative prices for the ULLS for the period 1 August 2009 to 31 December 2010

ULLS Monthly Charges

The indicative prices for ULLS monthly charges on a per service per month basis for Bands 1, 2 and 3 for the period 1 August 2009 to 31 December 2010 are:

Band	1 August 2009 – 31 December 2010
1	$ 6.60
2	$ 16.00
3	$ 31.30

Note: No indicative price is set for Band 4.

ULLS Single Connection Charges – In use ULLS and Transfer ULLS connections

The indicative prices for ULLS Single Connection Charges (In-use ULLS and Transfer ULLS connections) for the period 1 August 2009 to 31 December 2010 are:

Band	1 August 2009 – 31 December 2010
1	$ 50.40
2	$ 53.10
3	$ 57.70

Note: No indicative price is set for the ULLS in Band 4.

Note: No indicative price is set for a Vacant ULLS connection.

Charges for ULLS Managed Network Migration – involving the transfer of end user data services from a Telstra wholesale PSTN and/or ADSL service, or from a line that Telstra is using to supply a ULLS to another access seeker ('MNM')

The indicative prices for ULLS connections in an MNM for the period 1 August 2009 to 31 December 2010 are:

Component	1 August 2009 – 31 December 2010
– Fixed amount (per MNM)	$ 138.00
– Variable amount (per connection)	+ $ 25.00

The indicative prices for the cancellation of a ULLS order that was to be connected as part of a MNM are:

- $20 per service on which pre-jumpering has occurred;
- plus, in those cases where the entire MNM scheduled for the exchange is cancelled, an additional charge per MNM that equals the fixed amount that was payable in respect of that MNM.

ULLS MNM minimum exchange charge

The indicative prices for the minimum exchange charge per MNM are:

	1 August 2009 – 31 December 2010
Per exchange	$ 638.00

ULLS Call Diversion Charges

The indicative prices for the initial connection/activation of ULLS call diversion for the period 1 August 2009 to 31 December 2010 are:

Component	**1 August 2009 – 31 December 2010**
– Fixed amount (per ULLS call diversion)	$ 9.30
– Variable amount (pro rata per month)	$12.50

Pricing Principles for the Line Sharing Service (LSS) Determination 2009

Trade Practices Act 1974

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this Determination under section 152AQA of the *Trade Practices Act 1974*.

Dated December 2009

Graeme Samuel
Chairman

Australian Competition and Consumer Commission

1 Name of Determination

This Determination is the *Pricing Principles for the Line Sharing Service (LSS) Determination 2009.*

2 Commencement

This Determination commences on the day it is made.

Note: The Australian Competition and Consumer Commission must have regard to this Determination if it is required to arbitrate an access dispute under Division 8 of the *Trade Practices Act 1974* in relation to the declared services covered by this Determination (see subsection 152AQA(6)). An arbitral determination may be backdated (see section 152DNA).

3 Pricing principles and indicative prices

The pricing principles specified in Schedules 1 and 3 and indicative prices specified in Schedules 2 and 4 are to apply to the Line Sharing Service (***LSS***) declared by the Australian Competition and Consumer Commission (***Commission***) under section 152AL of the *Trade Practices Act 1974* (***Act***).

4 Repeal of earlier Pricing Principles Determinations for the LSS

This Determination repeals the following instrument:

- .*Pricing Principles for the Line Sharing Service* dated 24 October 2007; and
- any earlier Pricing Principles Determinations made for the LSS.

Schedule 1 Pricing principles for the LSS for the period to 31 July 2009

The Commission's pricing principles for the LSS for the period to 31 July 2009 are:

- a TSLRIC+ pricing principle should be applied to the LSS;
- a specific cost component should be included in the LSS monthly price, calculated by combining 'LSS specific costs' with 'ULLS specific costs' and Telstra's internal equivalent costs for ADSL, and allocating those costs across the number of active ULLS, LSS and ADSL lines;
- a contribution for line costs will not be recovered in the LSS monthly price;
- connection and disconnection charges should be set with reference to the amounts charged by third party contractors to Telstra for jumpering work in exchanges, indirect costs and back-of-house costs.

Schedule 2 Indicative prices for the LSS for the period to 31 July 2009

The indicative prices for the LSS for the period to 31 July 2009 are:

LSS monthly charge

	Until 30 June 2006	2006-07	2007-08	1 July 2008 to 31 July 2009
Per service	$2.50	$2.50	$2.50	$2.50

LSS single connections

	Until 30 June 2006	2006-07	2007-08	1 July 2008 to 31 July 2009
Per connection	$38.70	$39.30	$41.40	$43.10

Note: These charges do not apply to connections in Band 4
Note: These charges do not apply where the line on which the LSS is connected was being used to supply a ULLS.

LSS single disconnections (where payable)

	Until 30 June 2006	2006-07	2007-08	1 July 2008 to 31 July 2009
Per disconnection	$34.70	$35.10	$37.10	$38.70

Note: These charges are not payable for:
(a) a disconnection made pursuant to a Telstra LSS churn process by which services can be transferred between LSS, and between LSS and DSL services, or
(b) any period in which the access seeker was participating in the Telstra LSS churn process and Telstra (Bigpond) was not participating in the Telstra LSS churn process.

LSS managed network migration (MNM) connection charges – where the service is to be connected on a line that Telstra is using to supply a wholesale ADSL service

	Until 30 June 2006	1 July 2006 to 31 May 2007	1 June 2007 to 30 June 2008	1 July 2008 to 31 July 2009
Fixed (per MNM)	$126.00	$130.20	$134.50	$140.10
Variable (per connection)	$ 28.70	$28.70	$ 30.90	$ 32.20

Note: These charges do not apply to MNMs in Band 4

LSS MNM minimum exchange charge

	Until 30 June 2006	1 July 2006 to 31 May 2007	1 June 2007 to 30 June 2008	1 July 2008 to 31 July 2009
Per exchange	$700.00	$704.20	$752.50	$784.10

Note: These charges do not apply to MNMs in Band 4

Schedule 3 Pricing principles for the LSS for the period 1 August 2009 to 31 December 2010

The Commission's pricing principles for the LSS for the period 1 August 2009 to 31 December 2010 are:

- a TSLRIC+ pricing principle should be applied to the LSS;
- a specific cost component should be included in the LSS monthly price, calculated by combining 'LSS specific costs' with 'ULLS specific costs' and Telstra's internal equivalent costs for ADSL, and allocating those costs across the number of active ULLS, LSS and ADSL lines;
- a contribution for line costs will not be recovered in the LSS monthly price;
- connection and disconnection charges should be set with reference to the amounts charged by third party contractors to Telstra for jumpering work in exchanges, indirect costs and back-of-house costs.

Schedule 4 Indicative prices for the LSS for the period 1 August 2009 to 31 December 2010

The indicative prices for the LSS for the period 1 August 2009 to 31 December 2010 are:

LSS monthly charge

	1 August 2009 – 31 December 2010
Per service	$2.50

LSS single connections

	1 August 2009 – 31 December 2010
Per connection	$43.10

Note: These charges do not apply to connections in Band 4
Note: These charges do not apply where the line on which the LSS is connected was being used to supply a ULLS.

LSS single disconnections (where payable)

	1 August 2009 – 31 December 2010
Per disconnection	$38.70

Note: These charges are not payable for:
(a) a disconnection made pursuant to a Telstra LSS churn process by which services can be transferred between LSS, and between LSS and DSL services, or
(b) any period in which the access seeker was participating in the Telstra LSS churn process and Telstra (Bigpond) was not participating in the Telstra LSS churn process.

LSS managed network migration (MNM) connection charges – where the service is to be connected on a line that Telstra is using to supply a wholesale ADSL service

	1 August 2009 – 31 December 2010
Fixed (per MNM)	$140.10
Variable (per connection)	$ 32.20

Note: These charges do not apply to MNMs in Band 4

LSS MNM minimum exchange charge

	1 August 2009 – 31 December 2010
Per exchange	$784.10

Note: These charges do not apply to MNMs in Band 4

Appendix 2. Explanatory Statements

This Appendix contains the explanatory statements for the following pricing principles determinations:

- LCS
- WLR
- PSTN OTA
- LSS
- ULLS

EXPLANATORY STATEMENT

Pricing Principles for the Local Carriage Service Determination 2009

Trade Practices Act 1974

Legislative Provisions

The *Pricing Principles for the Local Carriage Service Determination 2009 (*the Determination) has been made by the Australian Competition and Consumer Commission (the ACCC) in accordance with section 152AQA of the *Trade Practices Act 1974* (the Act).

Under Part XIC of the Act, the ACCC is responsible for arbitrating access disputes concerning access to particular declared services, and for assessing access undertakings relating to access to such declared services.

The ACCC concluded its strategic review of the fixed network services in July 2009 and has extended the declaration of the local carriage service (LCS) for a period of five years until 31 July 2014 pursuant to section 152AL of the Act.

Subsection 152AQA(1) of the Act provides that the ACCC must, in writing, determine principles relating to the price of access to a declared service.

Subsection 152AQA(2) of the Act provides that the determination may also contain price-related terms and conditions relating to access to the declared service.

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) of the Act to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

Subsection 152AQA(6) of the Act provides that the ACCC must have regard to the determination if it is required to arbitrate an access dispute under Division 8 of the Act in relation to the declared service.

However, although the ACCC must have regard to the determination when arbitrating an access dispute, the pricing principles and indicative prices are not binding and parties to arbitrations are still able to address the ACCC on the relevance and applicability of the Determination to the circumstances of their particular disputes.

The Determination adopts the pricing principles and indicative prices that applied until 31 July 2009 under the retail-minus-retail-cost (RMRC) approach and maintains this approach for the period 1 August 2009 to 31 December 2010.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the Determination is to inform industry and other interested parties of the principles and price-related terms and conditions that are likely to guide the ACCC when considering an access dispute or assessing an undertaking in relation to pricing for the LCS.

Background

In November 2008 the ACCC commenced a public declaration inquiry for six fixed line services. In July 2009 the ACCC released its final decision and maintained declaration for all six fixed line services including the LCS until 31 July 2014 pursuant to section 152AL of the Act.

On 21 August 2009 the ACCC commenced a public inquiry into the pricing principles and indicative prices that should apply for the six fixed line services, including the LCS, by issuing a draft determination and a supporting report for public comment.

After reviewing submissions from interested parties, the ACCC has made this Determination consolidating pricing principles and indicative prices from previous determinations for the following periods:

- any period up to 31 December 2007;
- 1 January 2008 to 31 July 2009;
- 1 August 2009 to 31 December 2010.

The ACCC's analysis regarding the pricing principles and indicative prices for the LCS is set out in the ACCC's *Fixed Services Review – Final pricing principles and indicative prices*, available on the ACCC's website at www.accc.gov.au.

The Determination adopts the RMRC pricing principles and indicative prices that applied for the service until 31 July 2009. Pricing to 31 December 2007 was established by the instrument *Pricing Principles for the Local Carriage Service, Wholesale Line Rental Service and Public Switched Telephone Originating and Terminating Access Services* made under section 152AQA of the Act on 29 November 2006.

Pricing for the period 1 January 2008 to 31 July 2009 was established by the instrument *Pricing Principles for the Local Carriage Service and the Wholesale Line Rental Service* made under section 152AQA of the Act on 30 July 2008. Both of these instruments have been repealed.

The pricing principles and indicative prices for the period 1 August 2009 to 31 December 2010 continues to adopt the RMRC approach.

Regulation Impact Statement

The Office of Best Practice Regulation advises (ID 10753) the ACCC that a Regulation Impact Statement is not required for determinations made under section 152AQA.

Consultation

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) of the Act to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

On 21 August 2009 the ACCC released the *Fixed Services Review – draft pricing principles and indicative prices* for public comment. The report was published on the ACCC's website www.accc.gov.au and included draft pricing principles and indicative prices for the six fixed line services. Interested parties were invited to make submissions within 5 weeks. The timeframe for submissions was subsequently extended by a further 2 weeks following a number of requests from interested parties. The ACCC received submissions from:

- SP Telemedia Limited
- Australian Telecommunications Users Group Limited
- TransACT Communications Pty Limited
- Adam Internet Pty Ltd, Agile Pty Ltd / Internode Pty Ltd, Amcom Pty Ltd, Chime Communications Pty Ltd / iiNet Limited, EFTel Limited, Netspace Networks Pty Ltd, Network Technology (Australia) Pty Ltd, TSN Communications / Saunders Properties and Wideband Networks Pty Ltd
- AAPT Limited
- Macquarie Telecom Pty Limited
- Competitive Carriers' Coalition Inc
- SingTel Optus Pty Limited
- Primus Telecom
- Telstra Corporation Limited

The ACCC has taken all of these submissions into account in making the Determination.

Commencement of Determination

The Determination commences on the day it is made.

Notes on the Determination

The ACCC's principles relating to the price of access to the LCS are set out in Schedules 1, 3 and 5 of the Determination. The ACCC's indicative prices are set out in Schedules 2, 4 and 6 of the Determination.

The pricing principles in Schedules 1, 3 and 5 state that the price of the WLR should be determined on the basis of an RMRC pricing approach**.** Under an RMRC methodology, the access price is determined by deducting the access provider's avoidable costs of retailing a given service to end-users from the retail price paid for that service.

Schedules 2, 4 and 6 set out the ACCC's indicative prices for the LCS for the following periods:

- any period up to 31 December 2007 (Schedule 2);
- 1 January 2008 to 31 July 2009 (Schedule 4); and
- 1 August 2009 to 31 December 2010 (Schedule 6).

EXPLANATORY STATEMENT

Pricing Principles for the Wholesale Line Rental Determination 2009

Trade Practices Act 1974

Legislative Provisions

The *Pricing Principles for the Wholesale Line Rental Determination 2009 (*the Determination) has been made by the Australian Competition and Consumer Commission (the ACCC) in accordance with section 152AQA of the *Trade Practices Act 1974* (the Act).

Under Part XIC of the Act, the ACCC is responsible for arbitrating access disputes concerning access to particular declared services, and for assessing access undertakings relating to access to such declared services.

The ACCC concluded its strategic review of the fixed network services in July 2009 and has extended the declaration of the wholesale line rental (WLR) for a period of five years until 31 July 2014 pursuant to section 152AL of the Act.

Subsection 152AQA(1) of the Act provides that the ACCC must, in writing, determine principles relating to the price of access to a declared service.

Subsection 152AQA(2) of the Act provides that the determination may also contain price-related terms and conditions relating to access to the declared service.

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

Subsection 152AQA(6) of the Act provides that the ACCC must have regard to the determination if it is required to arbitrate an access dispute under Division 8 of the Act in relation to the declared service.

However, although the ACCC must have regard to pricing principles when arbitrating an access dispute, the pricing principles and indicative prices are not binding and parties to arbitrations are still able to address the ACCC on the relevance and applicability of the Determination to the circumstances of their particular disputes.

The Determination adopts the pricing principles and indicative prices that applied until 31 July 2009 under the retail-minus-retail-cost (RMRC) approach. The RMRC approach is maintained for pricing from 1 August 2009 to 31 December 2010.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the Determination is to inform industry and other interested parties of the principles and price-related terms and conditions that are likely to guide the ACCC when considering an access dispute or assessing an undertaking in relation to pricing for the WLR.

Background

In November 2008 the ACCC commenced a public declaration inquiry for six fixed line services. This inquiry consolidated services which had previously been assessed independently. In July 2009 the ACCC released its final decision and maintained declaration for all six fixed line services including the WLR until 31 July 2014 pursuant to section 152AL of the Act.

In August 2009 the ACCC commenced a public inquiry into WLR pricing, in the context of a broader inquiry into pricing for the six fixed line services, by issuing a draft determination for public comment. After reviewing submissions from interested parties, the ACCC has made this Determination consolidating pricing principles and indicative prices from previous determinations for the following periods:

- any period up to 31 December 2007;
- 1 January 2008 to 31 July 2009;
- 1 August 2009 to 31 December 2010.

The ACCC's analysis regarding the pricing principles applicable to the WLR is set out in the ACCC's *Fixed Services Review – Final pricing principles and indicative prices*, available on the ACCC's website at www.accc.gov.au.

The Determination adopts the RMRC pricing principles and indicative pricing that applied until 31 July 2009. Pricing to 31 December 2007 was established by the instrument *Pricing Principles for the Local Carriage Service, Wholesale Line Rental Service and Public Switched Telephone Originating and Terminating Access Services* made under section 152AQA of the Act on 29 November 2006.

Pricing for the period 1 January 2008 to 31 July 2009 was established by the instrument *Pricing Principles for the Local Carriage Service and the Wholesale Line Rental Service* made under section 152AQA of the Act on 30 July 2008. Both of these instruments have been repealed.

Pricing from 1 August 2009 to 31 December 2010 continues to adopt the RMRC pricing principles and indicative pricing.

Regulation Impact Statement

The Office of Best Practice Regulation advises (ID 10753) the ACCC that a Regulation Impact Statement is not required for determinations made under section 152AQA.

Consultation

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

On 21 August 2009 the ACCC released the *Fixed Services Review – draft pricing principles and indicative prices* for public comment. It was published on the ACCC's website www.accc.gov.au and included draft pricing principles and indicative prices. Interested parties were provided 5 weeks within which to make submissions which was subsequently extended by a further 2 weeks following a number of requests. The ACCC received submissions from

- SP Telemedia Limited
- Australian Telecommunications Users Group Limited
- TransACT Communications Pty Limited
- Adam Internet Pty Ltd, Agile Pty Ltd / Internode Pty Ltd, Amcom Pty Ltd, Chime Communications Pty Ltd / iiNet Limited, EFTel Limited, Netspace Networks Pty Ltd, Network Technology (Australia) Pty Ltd, TSN Communications / Saunders Properties and Wideband Networks Pty Ltd
- AAPT Limited
- Macquarie Telecom Pty Limited
- Competitive Carriers' Coalition Inc
- SingTel Optus Pty Limited
- Primus Telecom
- Telstra Corporation Limited

The ACCC has taken all of these submissions into account in making the Determination.

Commencement of Determination

The Determination commences on the day it is made.

Notes on the Determination

The ACCC's principles relating to the price of access to the WLR service are set out in Schedules 1, 3 and 5 of the Determination. The ACCC's indicative prices are set out in Schedules 2, 4 and 6 of the Determination.

The pricing principles in Schedules 1, 3 and 5 state that the price of the WLR should be determined on the basis of an RMRC pricing approach. Under an RMRC methodology, the access price is determined by deducting the access provider's avoidable costs of retailing a given service to end-users from the retail price paid for that service.

Schedules 2, 4 and 6 set out the ACCC's indicative prices for the WLR service for the following periods:

- any period up to 31 December 2007 (Schedule 2);
- 1 January 2008 to 31 July 2009 (Schedule 4); and
- 1 August 2009 to 31 December 2010 (Schedule 6).

EXPLANATORY STATEMENT

Pricing Principles for the Public Switched Telephone Network Originating Access and Terminating Access Services (PSTN OTA) Determination 2009

Trade Practices Act 1974

Legislative Provisions

The *Pricing Principles for the Local Carriage Service Determination 2009 (*the Determination) has been made by the Australian Competition and Consumer Commission (the ACCC) in accordance with section 152AQA of the *Trade Practices Act 1974* (the Act).

Under Part XIC of the Act, the ACCC is responsible for arbitrating access disputes concerning access to particular declared services, and for assessing access undertakings relating to access to such declared services.

The ACCC concluded its strategic review of the fixed network services in July 2009 and has extended the declaration of the public switched telephone network originating and terminating access (PSTN OTA) for a period of five years until 31 July 2014 pursuant to section 152AL of the Act.

Subsection 152AQA(1) of the Act provides that the ACCC must, in writing, determine principles relating to the price of access to a declared service.

Subsection 152AQA(2) of the Act provides that the determination may also contain price-related terms and conditions relating to access to the declared service.

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

Subsection 152AQA(6) of the Act provides that the ACCC must have regard to the determination if it is required to arbitrate an access dispute under Division 8 of the Act in relation to the declared service.

However, although the ACCC must have regard to pricing principles when arbitrating an access dispute, the pricing principles and indicative prices are not binding and parties to arbitrations are still able to address the ACCC on the relevance and applicability of the Determination to the circumstances of their particular disputes.

The Determination adopts the pricing principles and indicative prices that applied until 31 December 2007 under the total service long-run incremental cost (TSLRIC) approach. The TSLRIC approach is maintained for pricing for the period 1 August 2009 until 31 December 2010. No pricing principles or indicative prices for the period 1 January 2008 to 31 July 2009 were made.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the Determination is to inform industry and other interested parties of the principles and price-related terms and conditions that are likely to guide the ACCC when considering an access dispute or assessing an undertaking in relation to pricing for the LCS.

Background

In November 2008 the ACCC commenced a public declaration inquiry for six fixed line services. This inquiry consolidated services which had previously been assessed independently. In July 2009 the ACCC released its final decision and maintained declaration for all six fixed line services including the PSTN OTA until 31 July 2014 pursuant to section 152AL of the Act.

In August 2009 the ACCC commenced a public inquiry into PSTN OTA pricing, in the context of a broader inquiry into pricing for the six fixed line services, by issuing a draft determination for public comment. After reviewing submissions from interested parties, the ACCC has made the Determination consolidating pricing principles and indicative prices from its previous determination for the following periods:

- any period up to 31 December 2007; and
- 1 August 2009 to 31 December 2010.

The ACCC's analysis regarding the pricing principles applicable to the PSTN OTA is set out in the ACCC's *Fixed Services Review – Final pricing principles and indicative prices*, available on the ACCC's website at www.accc.gov.au.

The Determination adopts the TSLRIC pricing principle and indicative pricing that applied until 31 December 2007. Pricing to 31 December 2007 was established for 2006-2007 by Schedule 3 of the *Pricing Principles for the Local Carriage Service, Wholesale Line Rental Service and Public Switched Telephone Originating and Terminating Access Services* instrument made under section 152AQA of the Act on 29 November 2006. This instrument has been repealed.

Pricing from 1 August 2009 to 31 December 2010 continues to adopt TSLRIC pricing principles and indicative pricing.

Regulation Impact Statement

The Office of Best Practice Regulation advises (ID 10753) the ACCC that a Regulation Impact Statement is not required for determinations made under section 152AQA.

Consultation

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

On 21 August 2009 the ACCC released the *Fixed Services Review – draft pricing principles and indicative prices* for public comment. It was published on the ACCC's website www.accc.gov.au and included draft pricing principles and indicative prices. Interested parties were provided 5 weeks within which to make submissions which was subsequently extended by a further 2 weeks following a number of requests. The ACCC received submissions from

- SP Telemedia Limited
- Australian Telecommunications Users Group Limited
- TransACT Communications Pty Limited
- Adam Internet Pty Ltd, Agile Pty Ltd / Internode Pty Ltd, Amcom Pty Ltd, Chime Communications Pty Ltd / iiNet Limited, EFTel Limited, Netspace Networks Pty Ltd, Network Technology (Australia) Pty Ltd, TSN Communications / Saunders Properties and Wideband Networks Pty Ltd
- AAPT Limited
- Macquarie Telecom Pty Limited
- Competitive Carriers' Coalition Inc
- SingTel Optus Pty Limited
- Primus Telecom
- Telstra Corporation Limited

The ACCC has taken all of these submissions into account in making the Determination.

Commencement of Determination

The Determination commences on the day it is made.

Notes on the Determination

The ACCC's principles relating to the price of access to the PSTN OTA are set out in Schedules 1 and 3 of the Determination. The ACCC's indicative prices are set out in Schedules 2 and 4 of the Determination.

The pricing principles in Schedules 1 and 3 state that the price of the PSTN OTA should be determined on the basis of TSLRIC pricing approach.

The TSLRIC approach can be considered by breaking the concept into components:

- "Total service" refers to the cost of production of an entire service, rather than the cost of a particular unit. The cost is usually expressed on a per-unit basis by dividing by the number of units supplied.

- "Long run" means that the concept refers to a period where all factors of production can be varied, as opposed to the short run, where the amount of at least one factor of production is fixed.

- "Incremental cost" means that the concept refers to the additional costs of supplying the service over and above the situation where the service was not supplied, assuming the scale of all other production activities remains unchanged. Strictly speaking, the concept refers to only those costs that can be attributed to the production of the service. In practice, the strict TSLRIC concept is often expanded to include a contribution for indirect and overhead costs (TSLRIC+).

Schedules 2 and 4 set out the ACCC's indicative prices for the PSTN OTA for the following periods:

- any period up to 31 December 2007 (Schedule 2); and

- 1 August 2009 to 31 December 2010 (Schedule 4).

EXPLANATORY STATEMENT

Pricing Principles for the Unconditioned Local Loop Service (ULLS) Determination 2009

Trade Practices Act 1974

Legislative Provisions

The *Pricing Principles for the Unconditioned Local Loop Service (ULLS) Determination 2009 (*the Determination) has been made by the Australian Competition and Consumer Commission (the ACCC) in accordance with section 152AQA of the *Trade Practices Act 1974* (the Act).

Under Part XIC of the Act, the ACCC is responsible for arbitrating access disputes concerning access to particular declared services, and for assessing access undertakings relating to access to such declared services.

The unconditioned local loop service (ULLS) was declared to be a “declared service” on 4 August 1999 pursuant to subsection 152AL(3) of the Act. The ULLS was again declared to be a “declared service” on 1 August 2006 with an expiry date of 31 July 2009. In accordance with 152ALA, the ACCC has recently conducted and concluded its strategic review of the fixed network services in July 2009 and has extended the declaration of the ULLS for a period of five years until 31 July 2014.

Subsection 152AQA(1) of the Act provides that the ACCC must, in writing, determine principles relating to the price of access to a declared service.

Subsection 152AQA(2) of the Act provides that the determination may also contain price-related terms and conditions relating to access to the declared service.

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

Subsection 152AQA(6) of the Act provides that the ACCC must have regard to the determination if it is required to arbitrate an access dispute under Division 8 of the Act in relation to the declared service.

However, although the ACCC must have regard to pricing principles when arbitrating an access dispute, the pricing principles and indicative prices are not binding and parties to arbitrations are still able to address the ACCC on the relevance and applicability of the Determination to the circumstances of their particular disputes.

The Determination adopts the pricing principles and indicative prices that applied until 31 July 2009 under the total service long run incremental cost (TSLRIC+) approach and additional price terms set in arbitrations. The pricing principles and indicative prices for the period 1 August 2009 until 31 December 2010 continues to adopt the TSLRIC+ approach.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the Determination is to inform industry and other interested parties of the principles and price-related terms and conditions that are likely to guide the ACCC when considering an access dispute or assessing an undertaking in relation to pricing for the ULLS.

Background

In November 2008 the ACCC commenced a public declaration inquiry for six fixed line services. This inquiry consolidated services which had previously been assessed independently. In July 2009 the ACCC released its final decision and maintained the declaration for all six fixed line services including the ULLS until 31 July 2014 pursuant to section 152AL of the Act.

In August 2009 the ACCC commenced a public inquiry into ULLS pricing, in the context of a broader inquiry into pricing for the six fixed line services, by issuing a draft determination for public comment. After reviewing submissions from interested parties, the ACCC has made this Determination consolidating pricing principles and indicative prices from previous determinations as well any additional price terms set in arbitrations for the following periods:

- any period up to 31 July 2009; and
- 1 August 2009 to 31 December 2010.

The ACCC's analysis regarding the pricing principles applicable to the ULLS is set out in the ACCC's *Fixed Services Review – Final pricing principles and indicative prices*, available on the ACCC's website at www.accc.gov.au.

The Determination adopts the TSLRIC+ pricing principles and indicative pricing that applied until 31 July 2009 and additional price terms the ACCC has set in arbitrations. Pricing to 31 July 2009 was established by the instrument *Pricing Principles for the Unconditioned Local Loop Service* made under section 152AQA of the Act on 21 November 2007 and was amended on 16 June 2008 by the *Pricing Principles for the Unconditioned Local Loop Service Amendment Determination 2008 (No. 1)* instrument. This instrument has been repealed.

TSLRIC+ pricing is maintained for 1 August 2009 to 31 December 2010 through the continued employment of the 'specific costs model' with revised cost and demand data inputs.

Regulation Impact Statement

The Office of Best Practice Regulation advises (ID 10753) the ACCC that a Regulation Impact Statement is not required for determinations made under section 152AQA.

Consultation

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

On 21 August 2009 the ACCC released the *Fixed Services Review – draft pricing principles and indicative prices* for public comment. It was published on the ACCC's website www.accc.gov.au and included draft pricing principles and indicative prices. Interested parties were provided 5 weeks within which to make submissions which was subsequently extended by a further 2 weeks following a number of requests. The ACCC received submissions from

- SP Telemedia Limited
- Australian Telecommunications Users Group Limited
- TransACT Communications Pty Limited
- Adam Internet Pty Ltd, Agile Pty Ltd / Internode Pty Ltd, Amcom Pty Ltd, Chime Communications Pty Ltd / iiNet Limited, EFTel Limited, Netspace Networks Pty Ltd, Network Technology (Australia) Pty Ltd, TSN Communications / Saunders Properties and Wideband Networks Pty Ltd
- AAPT Limited
- Macquarie Telecom Pty Limited
- Competitive Carriers' Coalition Inc
- SingTel Optus Pty Limited
- Primus Telecom
- Telstra Corporation Limited

The ACCC has taken all of these submissions into account in making the Determination.

Commencement of Determination

The Determination commences on the day it is made.

Notes on the Determination

The ACCC's principles relating to the price of access to the ULLS are set out in Schedules 1 and 3 of the Determination. The ACCC's indicative prices are set out in Schedules 2 and 4 of the Determination.

The pricing principles in Schedules 1 and 3 state that the price of the ULLS should be determined on the basis of a TSLRIC+ approach which includes the following:

- a TSLRIC+ pricing principle;
- a specific cost component;
- geographically de-averaged ULLS charges; and
- connection charges.

TSLRIC+ pricing principle

The TSLRIC+ pricing principle can be considered by breaking the concept into components:

- "***Total service***" refers to the cost of production of an entire service, rather than the cost of a particular unit. The cost is usually expressed on a per-unit basis by dividing by the number of units supplied.
- "***Long run***" refers to a period where all factors of production can be varied, as opposed to the short run, where the amount of at least one factor of production is fixed.
- "***Incremental cost***" refers to the additional costs of supplying the service over and above the situation where the service was not supplied; assuming the scale of all other production activities remains unchanged. Strictly speaking, the concept refers to only those costs that can be attributed to the production of the service. In practice, the strict TSLRIC concept is often expanded to include a contribution for indirect and overhead costs (TSLRIC+).

Specific cost component

The Determination provides that a specific cost component is included in the LSS monthly price, calculated by combining 'ULLS-specific costs' with 'LSS-specific costs' and Telstra's internal equivalent costs for ADSL, and allocating those costs across the number of active ULLS, LSS and ADSL lines.

Specific costs are costs incurred by Telstra to allow for supply of the declared ULLS and other products. The costs typically claimed by Telstra are IT system development and operational costs, front-of-house connection group costs, wholesale product management costs and indirect costs. An access provider will face these categories of costs when:

- supplying the ULLS (or LSS) to another service provider; or

- providing line sharing to itself – that is, when it uses a copper loop to supply both voice and data services (either retail or wholesale) on the line.

Geographically de-averaged ULLS charges

The Determination provides that the ULLS charges are geographically de-averaged. Geographic de-averaging provides that prices are set for the ULLS such that they reflect significant cost differentials in different geographic regions.

Connection charges

The Determination provides that connection charges are set with reference to the amounts charged by third party contractors to Telstra for jumpering work in exchanges, indirect costs and back-of-house costs. Connection charges recover the costs of technicians performing jumpering work inside Telstra exchanges, travel and vehicle costs for the technicians, back-of-house costs and materials costs.

Schedules 2 and 4 set out the ACCC's indicative prices for the LCS for the following periods:

- any period up to 31 July 2009 (Schedule 2); and

- 1 August 2009 to 31 December 2010 (Schedule 4).

EXPLANATORY STATEMENT

Pricing Principles for the Line Sharing Service (LSS) Determination 2009

Trade Practices Act 1974

Legislative Provisions

The *Pricing Principles for the Line Sharing Service (LSS) Determination 2009 (*the Determination) has been made by the Australian Competition and Consumer Commission (the ACCC) in accordance with section 152AQA of the *Trade Practices Act 1974* (the Act).

Under Part XIC of the Act, the ACCC is responsible for arbitrating access disputes concerning access to particular declared services, and for assessing access undertakings relating to access to such declared services.

The line sharing service (LSS) was declared a "declared service" on 30 August 2002 pursuant to subsection 152AL(3) of the Act and was to expire in October 2007. The LSS was subsequently extended on 29 October 2007 with an expiry date of 31 July 2009. In accordance with 152ALA, the ACCC has recently conducted and concluded its strategic review of the fixed network services in July 2009 and has extended the declaration of the line sharing service (LSS) for a period of five years until 31 July 2014.

Subsection 152AQA(1) of the Act provides that the ACCC must, in writing, determine principles relating to the price of access to a declared service.

Subsection 152AQA(2) of the Act provides that the determination may also contain price-related terms and conditions relating to access to the declared service.

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

Subsection 152AQA(6) of the Act provides that the ACCC must have regard to the determination if it is required to arbitrate an access dispute under Division 8 of the Act in relation to the declared service.

However, although the ACCC must have regard to pricing principles when arbitrating an access dispute, the pricing principles and indicative prices are not binding and parties to arbitrations are still able to address the ACCC on the relevance and applicability of the Determination to the circumstances of their particular disputes.

The Determination adopts the pricing principles and indicative prices that applied until 31 July 2009 under the total service long run incremental cost (TSLRIC+) approach and additional price terms set in arbitrations. The pricing principles and indicative prices for the period 1 August 2009 until 31 December 2010 continues to adopt the TSLRIC+ approach.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose

The purpose of the Determination is to inform industry and other interested parties of the principles and price-related terms and conditions that are likely to guide the ACCC when considering an access dispute or assessing an undertaking in relation to pricing for the LSS.

Background

In November 2008 the ACCC commenced a public declaration inquiry for six fixed line services. This inquiry consolidated services which had previously been assessed independently. In July 2009 the ACCC released its final decision and maintained declaration for all six fixed line services including the LSS until 31 July 2014 pursuant to section 152AL of the Act.

In August 2009 the ACCC commenced a public inquiry into LSS pricing, in the context of a broader inquiry into pricing for the six fixed line services, by issuing a draft determination for public comment. After reviewing submissions from interested parties, the ACCC has made this Determination consolidating pricing principles and indicative prices from previous determinations as well any additional price terms set in arbitrations for the following periods:

- any period up to 31 July 2009; and
- 1 August 2009 to 31 December 2010.

The ACCC's analysis regarding the pricing principles applicable to the LSS is set out in the ACCC's *Fixed Services Review – Final pricing principles and indicative prices*, available on the ACCC's website at www.accc.gov.au.

The Determination adopts the TSLRIC+ pricing principles and indicative pricing that applied until 31 July 2009 and additional price terms the ACCC has set in arbitrations. Pricing to 31 July 2009 was established by the instrument *Pricing Principles for the Line Sharing Service* made under section 152AQA of the Act on 24 October 2007. This instrument has been repealed.

TSLRIC+ pricing is maintained for 1 August 2009 to 31 December 2010 through the continued employment of the 'specific costs model' with revised cost and demand data inputs.

Regulation Impact Statement

The Office of Best Practice Regulation advises (ID 10753) the ACCC that a Regulation Impact Statement is not required for determinations made under section 152AQA.

Consultation

Before making a pricing principles determination, the ACCC is required by subsection 152AQA(4) to publish a draft determination, invite interested parties to make submissions and consider any submissions received.

On 21 August 2009 the ACCC released the *Fixed Services Review – draft pricing principles and indicative prices* for public comment. It was published on the ACCC's website www.accc.gov.au and included draft pricing principles and indicative prices. Interested parties were provided 5 weeks within which to make submissions which was subsequently extended by a further 2 weeks following a number of requests. The ACCC received submissions from

- SP Telemedia Limited
- Australian Telecommunications Users Group Limited
- TransACT Communications Pty Limited
- Adam Internet Pty Ltd, Agile Pty Ltd / Internode Pty Ltd, Amcom Pty Ltd, Chime Communications Pty Ltd / iiNet Limited, EFTel Limited, Netspace Networks Pty Ltd, Network Technology (Australia) Pty Ltd, TSN Communications / Saunders Properties and Wideband Networks Pty Ltd
- AAPT Limited
- Macquarie Telecom Pty Limited
- Competitive Carriers' Coalition Inc
- SingTel Optus Pty Limited
- Primus Telecom
- Telstra Corporation Limited

The ACCC has taken all of these submissions into account in making the Determination.

Commencement of Determination

The Determination commences on the day it is made.

Notes on the Determination

The ACCC's principles relating to the price of access to the LSS are set out in Schedules 1 and 3 of the Determination. The ACCC's indicative prices are set out in Schedules 2 and 4 of the Determination.

The pricing principles in Schedules 1 and 3 state that the price of the LSS should be determined on the basis of a TSLRIC+ approach which includes the following.

- a TSLRIC+ pricing principle;
- a specific cost component;
- a contribution for line costs; and
- connection and disconnection charges.

TSLRIC+ pricing principle

The TSLRIC+ pricing principle can be considered by breaking the concept into components:

- "***Total service***" refers to the cost of production of an entire service, rather than the cost of a particular unit. The cost is usually expressed on a per-unit basis by dividing by the number of units supplied.
- "***Long run***" refers to a period where all factors of production can be varied, as opposed to the short run, where the amount of at least one factor of production is fixed.
- "***Incremental cost***" refers to the additional costs of supplying the service over and above the situation where the service was not supplied; assuming the scale of all other production activities remains unchanged. Strictly speaking, the concept refers to only those costs that can be attributed to the production of the service. In practice, the strict TSLRIC concept is often expanded to include a contribution for indirect and overhead costs (TSLRIC+).

Specific cost component

The Determination provides that a specific cost component is included in the LSS monthly price, calculated by combining 'LSS-specific costs' with 'ULLS-specific costs' and Telstra's internal equivalent costs for ADSL, and allocating those costs across the number of active ULLS, LSS and ADSL lines.

Specific costs are costs incurred by Telstra to allow for supply of the declared LSS and other products. The costs typically claimed by Telstra are IT system development and operational costs, front-of-house connection group costs, wholesale product management costs and indirect costs. An access provider will face these categories of costs when:

- supplying the LSS (or ULLS) to another service provider; or

- providing line sharing to itself – that is, when it uses a copper loop to supply both voice and data services (either retail or wholesale) on the line.

Contribution for line costs

The Determination provides that a contribution for line costs will not be recovered in the LSS monthly price. LSS is provided over the high frequency part of a copper line. The LSS service description specifies that the LSS is only provided in association with the provision of an underlying PSTN voice service on the same copper line. The line costs are the costs of the copper line that is shared between the LSS and the underlying PSTN voice service.

Connection and disconnection charges

The Determination provides that connection charges are set with reference to the amounts charged by third party contractors to Telstra for jumpering work in exchanges, indirect costs and back-of-house costs. Connection charges recover the costs of technicians performing jumpering work inside Telstra exchanges, travel and vehicle costs for the technicians, back-of-house costs and materials costs.

Schedules 2 and 4 set out the ACCC's indicative prices for the LSS for the following periods:

- any period up to 31 July 2009 (Schedule 2); and

- 1 August 2009 to 31 December 2010 (Schedule 4).

Appendix 3. List of submissions from interested parties

- AAPT - *Submission in response to draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS* (public and confidential versions), October 2009
- ATUG - *Submission on draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS*, 5 October 2009
- Competitive Carriers' Coalition - *Submission to the Draft Indicative Fixed Lines Prices*, October 2009
- Herbert Geer, on behalf of the Access Seekers[64] - *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, 9 October 2009
- Macquarie Telecom - *Submission in Response to Draft Pricing Principles and Indicative Prices for LCS, WLR, PSTN OTA, ULLS, LSS,* 9 October 2009 and Macquarie Telecom, *Draft pricing principles and indicative prices for fixed services—Discussion with the ACCC*, 22 October 2009 and Macquarie Telecom, *Setting Indicative Prices for Fixed Services*, 13 November 2009
- Optus - *Optus Submission to Australian Competition and Consumer Commission in response to draft determination on Pricing Principles and Indicative Prices for Fixed Line Services,* (public and confidential versions), October 2009
- Primus Telecom - *Submission in response to the ACCC's Draft Report on pricing principles and indicative pricing for fixed line services*, October 2009
- SP Telemedia - *Submission on draft pricing principles*, 25 September 2009
- Telstra - *Submission in response to the ACCC's draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS, LSS* (public and confidential versions), 9 October 2009[65]
- TransACT Capital Communications, *Submission on draft pricing principles and indicative prices for LCS, WLR, PSTN OTA, ULLS and LSS*, October 2009

The above public submissions, supporting material and correspondence received can be found on the ACCC website.

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64 The access seekers collectively referred to as the 'Access Seekers' are: Adam Internet Pty Limited, Agile Pty Limited/Internode Pty Limited, Amcom Pty Limited, Chime Communications Pty Limited/iiNet Limited, EFTel Limited, Netspace Networks Pty Limited, Network Technology (Australia) Pty Limited, TSN Communications/Saunders Properties and Wideband Networks Pty Limited

65 Telstra provided 3 volumes of material including covering letters which can be found on the ACCC website. Telstra has also provided further letters and attachments in support of its submission on 29 October and 10 November 2009 which are also available on the ACCC website.