

Commonwealth of Australia

Telecommunications (Consumer Protection and Service Standards) Act 1999

**Telstra Carrier Charges—Price Control Arrangements,
Notification and Disallowance Determination No. 1 of
2005 (Amendment No. 1 of 2010)**

I, STEPHEN MICHAEL CONROY, Minister for Broadband, Communications and the Digital Economy make the following Determination under subsections 154 (1), 155 (1) and 157 (1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Dated: 2010.

STEPHEN MICHAEL CONROY

Minister for Broadband, Communications and the Digital Economy

1 Name of Determination

This Determination is the *Telstra Carrier Charges—Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2010)*.

2 Commencement

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

3 Variation

The *Telstra Carrier Charges—Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* is varied as set out in the Schedule to this Determination.

Schedule Amendments
(clauses 3, 20, 22, 23 and 30)

[1] Clause 3

Omit “30 June 2010” and substitute “30 June 2012”.

[2] Paragraph 20(2)(c)

Omit “2009/2010 financial year” and substitute “2010/2011 financial year or 2011/2012 financial year”.

[3] Subclause 22(2)

Omit subclause 22(2) and insert:

- “(2) Subclause (1) does not apply if the value of the price movement of:
- (a) the first basket of services; or
 - (b) the second basket of services; or
 - (c) the third basket of services; or
 - (d) the fourth basket of services;
- over the 2011/2012 financial year is less than the price-cap for the relevant basket in that financial year.”

[4] Subclause 23(2)

Omit subclause 23(2) and insert:

- “(2) If:
- (a) the value of the price movement of the first basket of services over the 2011/2012 financial year is greater than the price-cap for that financial year (as varied in accordance with this Determination) for the relevant basket plus 0.2 percentage points; and
 - (b) clauses 11, 12 and 13 continue to apply in the 2012/2013 financial year in accordance with clause 30 as if this Determination had not expired;
- the price-cap for the relevant basket in the 2012/2013 financial year is taken to be varied by the unexercised amount of the price-cap for the 2011/2012 financial year.”

[5] Subclause 23(3)

Omit subclause 23(3) and insert:

- “(3) If:
- (a) the value of the price movement of the second, third or fourth basket of services over the 2011/2012 financial year is greater than the price-cap for that financial year (as varied in accordance with this Determination) for the relevant basket plus 0.1 percentage points; and
 - (b) clauses 11, 12 and 13 continue to apply in the 2012/2013 financial year in accordance with clause 30 as if this Determination had not expired;
- the price-cap for the relevant basket in the 2012/2013 financial year is taken to be varied by the unexercised amount of the price-cap for the 2011/2012 financial year.”

[6] Part 6 Title

Omit “2010/2011” and substitute “2012/2013”.

[7] Clause 30 Title

Omit “2010/2011 financial year” and substitute “2012/2013 financial year”.

EXPLANATORY STATEMENT

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2010)

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

OVERVIEW

The Determination is made under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act).

The Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

The Determination amends certain provisions of the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* (the Original Determination).

The purpose of this Amending Determination is to extend the expiry date of the price control arrangements under the Original Determination from 30 June 2010 to 30 June 2012. The roll-over provisions under clause 30 are similarly extended by 24 months.

The extension follows the conclusion of a review of retail price controls by the Australian Competition and Consumer Commission (ACCC). This review was undertaken in accordance with *Australian Competition and Consumer Commission (Inquiry into Price Control Arrangements) Direction (No. 1) 2009* (the Direction).

The Direction was made on 23 December 2009. The Minister for Broadband, Communications and the Digital Economy (the Minister) directed the ACCC under subsection 496(1) of the *Telecommunications Act 1997* (the Tel Act) to hold a public enquiry into the retail price control arrangements that should apply under Part 9 of the Act to Telstra after expiry of the Original Determination on 30 June 2010.

The Direction provided that the ACCC was to have regard to the intention that price controls would remain in place for a further two years to 30 June 2012 while the Australian Government considered the impact of the transition to the National Broadband Network (NBN) on pricing policy. Other legislative proposals that will have implications for the retail price control arrangements include the introduction into Parliament of the following Bills:

- Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 (the TLA Bill) on 15 September 2009; and

- Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010 (the FD Bill) on 18 March 2010.

The TLA Bill seeks to amend the telecommunications regulatory regimes under the *Trade Practices Act 1974* and the Tel Act, as well as seeking to address Telstra's level of integration in the communications market. The transition to a NBN environment, including the establishment of NBN Co combined with the possible separation of Telstra, is likely to see significant structural and competitive changes to the telecommunications industry, with consequential effects on the way services are provided. The FD Bill proposes a new legislative framework for fibre-to-the-premises coverage in new residential estates.

On 15 January 2010 the ACCC commenced the inquiry by releasing the *Review of Telstra Price Control Arrangements – Discussion Paper*. Eleven public submissions were received in response, including a submission by Telstra.

On 16 June 2010 the ACCC publicly released the *Review of Telstra's price control arrangements* (the Review), which was provided to the Minister by the ACCC in March 2010. The Review supported the extension of the price control arrangements under the Original Determination for a period of two years to promote efficient pricing of certain fixed-line facilities.¹ The ACCC considered that many retail fixed-line telecommunications markets are not yet effectively competitive, due to a lack of competition in the wholesale markets where Telstra has significant market power due to ownership of the fixed-line local access network that connects most Australian households.²

The Review noted that the interested parties had divergent opinions on the need to retain price controls.³ The ACCC considered that the continued existence of Telstra's high market share in fixed voice services, combined with the expected impact of the NBN, necessitated retention of price controls in the interim to protect consumers.⁴ The ACCC considered that the existing price control arrangements had not prevented Telstra from recovering the costs of its fixed-line services, including the extension and maintenance of fixed-line infrastructure.⁵

In the Review, the ACCC recommended the retention of the existing structure of the first, second, third and fourth basket of services in Schedule 1 of the Determination.⁶ The extension of current arrangements by two years will preserve this structure. The Review also recommended retaining the price caps on the second, third and fourth basket with a price ceiling of the consumer price index (CPI), to protect consumers from unjustified

¹ The Review, p 51.

² The Review, p 13.

³ The Review, p 16.

⁴ The Review, pp 17-19, 21.

⁵ The Review, p 50.

⁶ The Review pp 27-28, 51.

price increases for the most basic line rental products, and to ensure price parity obligations in the transition to a NBN environment.⁷ The ACCC also recommended that the 22 cent price cap on local calls and calls to a data network access service number with the prefix 0198; and the 50 cent price cap on local calls from payphones be retained to assure consumers they will not be subject to unjustified price increases.⁸ The extension of current arrangements by two years will preserve these provisions.

The Review proposed various measures to streamline or update the price control arrangements. While these measures may be considered further in the future, the present Determination seeks only to extend the current arrangements in their existing form, as this will offer certainty and appropriate safeguards for consumers during a time of significant uncertainty in the sector.

As a result of this extension, Telstra will continue to accumulate carry-in credits or debits in successive years as usual during the extended period.

CONSULTATION

The Amending Instrument was published in draft form on 16 June 2010 on the website of the Department of Broadband, Communications and the Digital Economy. Submissions were invited from industry stakeholders, including Telstra and the ACCC, by 22 June 2010. XX submissions were received, which [supported/did not support] the proposed extension of the Original Determination.

NOTES ON CLAUSES

Clause 1 - Name of Determination

Clause 1 provides that the name of the Determination is the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No.1 of 2010)*.

Clause 2 - Commencement

Clause 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 – Variation

Clause 3 provides that the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* (the Original Determination) is amended as set out in the Schedule to the Amending Determination.

⁷ The Review, pp 32, 44, 51.

⁸ The Review, pp 34, 45, 51.

Schedule – Amendments

Item 1 – Clause 3

Clause 3 of the Original Determination provides that, subject to clauses 23 and 30, the Determination expires at the end of 30 June 2010. In order to give effect to a two year extension to the Determination, Item 1 of the Amending Determination replaces the date reference of “30 June 2010” with the new date of “30 June 2012”. This extension is broadly consistent with the recommendations made by the ACCC in its Report following the detailed review of the price control arrangements (as outlined in the “Overview” above). This extension recognises that the level of competition in the telecommunications market has not yet achieved a level to allow the removal of the price control arrangements.

This extension is also to enable the Australian Government to assess the impact of the NBN on the telecommunications market. The Australian Government will then be able to consider whether to further extend the Determination and whether any further changes to the Determination are required.

Item 2 – Paragraph 20(2)(c)

Clause 20 of the Original Determination provides Telstra with the option to defer exercising the price-cap for: (a) the first basket of services; or (b) the second basket of services; or (c) the third basket of services; or (d) the fourth basket of services.

Subclause (2) deals with when the election may be made. Item 2 of the Amending Determination will replace the reference of “2009/2010 financial year” with “2010/2011 financial year or 2011/2012 financial year, as applicable”.

Item 3 – Subclause 22(2)

Subclause 22(1) of the Original Determination provides that if Telstra reduces prices by more than required by a price-cap, the price-cap for the subsequent financial year will consequently be adjusted by that amount (representing a credit). No credit will apply, however, for price reductions under the price-cap in the financial year specified under subclause 22(2) (i.e. the final year of the period).

Item 3 of the Amending Determination will replace the reference of “2009/2010 financial year” in subclause 22(2) with “2011/2012 financial year” to reflect the two year extension to the operation of price controls.

Item 4 – Subclause 23(2)

Clause 23 of the Original Determination relates to the reconciliation of price movements above the set price cap. Subclause 23(2) provides that where the price movement for the

first basket of services for the last price-cap year is greater than the price-cap for that year, and clauses 11, 12 and 13 of the Determination still apply, the price cap for the relevant basket in the financial year 2010/2011 is to be varied by the difference.

As subclause 23(2) of the Original Determination contains multiple references to relevant dates, the entire subclause is, for clarity and ease of description, omitted and a new subclause (with updated date references), is inserted at Item 4 of the Amending Determination. This has the effect of updating date references in subclause 23(2). Specifically, all occurrences of “2010/2011 financial year” are replaced with “2012/2013 financial year”. Similarly, all references to “2009/2010 financial year” are updated to “2011/2012 financial year”, consistent with the 24-month extension to the price control arrangements. Apart from the date changes, the substantive provisions of this subclause remain unchanged.

Item 5 – Subclause 23(3)

As noted above, Clause 23 of the Original Determination relates to the reconciliation of price movements above the set price cap. Subclause 23(3) provides that where the price movement for the second, third or fourth basket of services for the last price-cap year (2009/2010 financial year) is greater than the price-cap for that year, and clauses 11, 12 and 13 of the Determination still apply, the price cap for the relevant basket in the financial year 2010/2011 is to be varied by the difference.

As Subclauses 23(3) of the Original Determination contains multiple references to relevant dates, the entire subclause is, for clarity and ease of description, omitted and a new subclause (incorporating updated date references), is inserted at Item 5 of the Amending Determination. This has the effect of updating all date references in subclause 23(3). Specifically, all occurrences of “2010/2011 financial year” are replaced with “2012/2013 financial year”. Similarly, all references to “2009/2010 financial year” are updated to “2011/2012 financial year”. Apart from the date changes, the substantive provisions of this subclause remain unchanged.

Item 6 – Part 6 (Title)

Item 6 of the Amending Determination represents a minor change to the title of Part 6 of the Original Determination. As the rollover provisions are being extended by a further 24 months, it is necessary to change the date reference in the title to “2012/2013”, which represents the financial year after expiry of the determination (as amended).

Item 7 – Clause 30 (Title)

In order to give effect to a 24-month extension to the rollover provisions in the Original Determination, Item 7 of the Amending Determination updates the date reference in the title of clause 30. The revised date reference is “2012/2013 financial year” which represents the financial year after expiry of the determination (as amended) on 30 June 2012.

DRAFT