



Submission by AAPT Limited (18 November 2011)

on

**Department of Broadband, Communications and the Digital
Economy Discussion Paper:
“Retail Price Controls Review”, dated 21 October 2011**



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Department of Broadband, Communications and the Digital Economy (**DBCDE**) discussion paper titled "*Retail Price Controls Review*" (**Discussion Paper**), dated 21 October 2011.
2. AAPT maintains the view that retail price controls represent a second-best approach to regulation. Therefore it is important for the Government to begin considering a process for reducing its reliance on retail price caps over time in order to reach a point where it is no longer utilised.

Executive summary

3. As previously submitted by AAPT as part of past consultations on the issue of the Telstra retail price controls (**RPCs**), AAPT considers that:
 - o The current Telstra RPCs have not had any real impact on the level of competition, availability, choice or quality of products or the level of investment decisions in telecommunications markets today.
 - o Although RPCs have played an important role within global telecommunications regulatory regimes in the past, over time they have become increasingly less relevant, almost to the point where they are now starting to become 'out of place' and represent a second-best form of regulation.
 - o Continued reliance on price controls is inappropriate today and attention should instead be focussed on "getting it right" in relation to wholesale regulation, particularly where regulated wholesale services are being supplied at prices well in excess of cost.
 - o If wholesale regulation (ie Parts XIB and XIC of the Competition and Consumer Act 2010) were utilised appropriately by the Australian Competition and Consumer Commission (**ACCC**), price caps would no longer be necessary for constraining the retail market power of Telstra and



enhancing efficiency. Further, a more appropriately defined Universal Service Obligation (USO) would be better at dealing with the type of equity considerations that price caps are presently targeted towards achieving.

2. AAPT notes that there has been some suggestion from the ACCC that price control sub caps for residential and business FTM services may be an appropriate tool in addressing the high costs to end users for making fixed to mobile (FTM) calls (which is due to integrated fixed line operators not passing through wholesale cost reductions).¹ Despite Telstra having substantial market power in the FTM market, AAPT does not consider that this justifies the creation of a separate FTM price cap as contemplated by the ACCC, unless perhaps it is tied to reductions in MTAS. Merely applying a simple FTM price cap will not encourage competition. On the contrary, it will hurt service providers (like AAPT) trying to compete in the FTM market and in the greater fixed voice market.
4. AAPT expands on these views expressed above in the below responses to the specific questions raised by the DBCDE in the Discussion Paper.

Answers to DBCDE questions

1. To what extent are retail price controls beneficial to consumers? In what circumstances are they needed as a substitute for competitive market pressures? To what extent do they limit competition?

AAPT remains of the views that:

- o while it is possible for RPCs to have an adverse impact on markets and on facilities based entry and investment, the current Telstra RPCs have had:
 - effectively a neutral impact on availability, choice and quality; and

¹ ACCC, *Draft MTAS Access Determination Explanatory Statement titled "Inquiry to make a final access determination for the Domestic Mobile Terminating Access Service (MTAS) Draft Access Determination Explanatory Statement"*, 23 September 2011, p. 18.



- virtually no impact on facilities based entry and investment, and that it is wholesale regulation which has had the most significant and positive impact in these areas (eg the declaration of ULLS); and
- o while the current Telstra RPCs on local calls and line rental products have to some extent had an impact on the price of these services, this has only occurred to a very limited degree because it is the wide spread use of bundling which has lowered pricing of local calls and line rental products.

AAPT agrees with Ofcom that the emphasis of telecommunications regulation should be placed on wholesale regulation because that is where the real gains can be made in the promotion of competition and consequently where better outcomes for consumers can be achieved.²

2. Once a more effective competitive market emerges via the NBN, will retail price controls still be necessary?

No. AAPT agrees that RPCs are not needed in a competitive retail market. However, AAPT does not believe that the converse necessarily applies. That is, a retail market which is not competitive does not necessarily mean that RPCs are needed. AAPT considers that appropriate wholesale regulation is the better regulatory intervention device to focus on in these circumstances.

3. Should price controls remain in place for services over the copper network during the NBN deployment?

Given the views set out in response to question 1, AAPT is minded to suggest that the Minister allow the current Telstra RPCs to expire on 30 June 2012.

That said, AAPT considers that the state of competition in the fixed voice market does not provide any signal to either retain or remove existing RPCs. AAPT considers that the state of the competition in the fixed voice market simply indicates that it is vital that Telstra's structural separation undertaking (SSU) delivers appropriate and

² Ofcom, *Retail Price Controls Explanatory Statement*, 19 July 2006



effective equivalence and transparency measures in relation to the provision of regulated services by Telstra to its wholesale customers.

In light of this and the current significant changes which the Australian telecommunications industry has undergone, and is still to undergo, in relation to the NBN roll out and Telstra's currently wholly inadequate SSU, AAPT would not be opposed to the Government adopting a 'wait and see' approach and extending the current Telstra RPCs (without change) for another short period of say two years.

4. If price controls are retained, which key services should be regulated?

While AAPT does not have a strong view as to whether current services should continue to be regulated, if the RPCs are retained, the preferable approach would be to extend them unchanged.

Fixed to mobile services

As part of the recent ACCC public inquiry into making a final access determination (FAD) for the MTAS, the ACCC noted in its accompanying explanatory statement to the draft MTAS FAD that:

- there was a lack of pass-through of reductions in wholesale mobile termination rates to retail FTM call rates despite significant falls in the regulated indicative price of MTAS; and
- price control sub caps for residential and business FTM services may be an appropriate tool to address the lack of pass through, rather than including an FTM pass-through mechanism within the FAD (which would apply to integrated operators) so that reductions in the MTAS rate would promptly benefit end users.³

Given the shift in focus away from RPCs in jurisdictions such as the UK, AAPT considers it would be inappropriate to contemplate an expansion in scope of the

³ ACCC, *Draft MTAS Access Determination Explanatory Statement titled "Inquiry to make a final access determination for the Domestic Mobile Terminating Access Service (MTAS) Draft Access Determination Explanatory Statement"*, 23 September 2011, p. 18.



current Telstra RPCs. While AAPT agrees that Telstra has substantial market power in the FTM market, this does not justify the creation of a FTM price cap as contemplated by the ACCC. If an FTM were to be introduced, it would only be effective in encouraging competition (and therefore consumer welfare) if any reduction in FTM prices are tied to corresponding reductions in wholesale MTAS rather than on a CPI – X % basis.

5. If retail price controls are retained on the copper network, should they be also be applied to services provided via the NBN fibre network? If not, why not?

No. Given the wholesale-only structure of the NBN world and the “level playing field” provisions, RPCs would not be required to be applied to services provided via the NBN fibre network.

6. If price controls continue in future, should they apply to all service providers? Would this restrict competition by smaller service providers?

No – they should only continue to apply to Telstra as it will still be the provider with the most significant market power in the industry for a long time to come. Moreover, applying RPCs to other service providers is not necessary as they would find it difficult to raise prices above Telstra’s prices and still be able to compete effectively.

7. How should low-income users be provided with equitable access to affordable basic telecommunications services and how should such access be delivered and funded?

As set out above, AAPT believes that a more appropriately defined USO would be better at dealing with the type of equity considerations that price caps are presently targeted towards achieving.

8. What is the ongoing role for LIMAC or should it be replaced, and if so, by whom?

In addition to continuing its current role as the “essential bridge” between Telstra and advocates for those most in need, the LIMAC should be tasked with the role of defining the USO to assist the TUSMA in formulating socially-useful telephone



products and services to ensure that low-income users are provided with equitable access to affordable basic telecommunications services.

9. Is there a long-term need for a legislative obligation to have regulations or other arrangements in place to provide untimed calls within and between adjacent Extended Zones?

This issue can be a matter for the LIMAC to determine and advise the TUSMA in its role as contemplated in the response to question 8 above.

10. What is the best option for meeting this obligation?

See response to question 8 and 9 above.

11. What regulatory oversight is required for the effective operation of the retail price controls? What role should the ACCC play in this?

For as long as the RPCs are retained, the ACCC's current powers should remain intact and possibly broadened as appropriate and required to enforce consumer welfare outcomes within any new USO framework that may be set up by the TUSMA.

12. What transitional arrangements might be required should price control arrangements be changed?

AAPT does not have a view about transitional arrangements as it advocates either letting the current Telstra RPCs expire or being extended unchanged for a short period of time.