



**Australian
Competition &
Consumer
Commission**

ACCC submission to DBCDE's review of the retail price control arrangements

December 2011

EXECUTIVE SUMMARY

This submission sets out the ACCC's views on the retail price control arrangements that apply to fixed-line voice services supplied by Telstra.

The ACCC was established to enhance the welfare of the Australian community by fostering competitive, efficient, fair and informed markets. The ACCC has a monitoring and reporting role in relation to the retail price controls. In addition, the ACCC has previously provided advice to the Minister on specific aspects of the retail price controls.

Retail price controls may be used to achieve both social and economic objectives. However, there is a risk that retail price controls may have negative effects on efficient investment and competition. This could result in adverse effects on the long-term interests of end users.

The ACCC considers that the government should begin phasing out the retail price control arrangements. Competition in the retail fixed voice market has continued to increase on the back of recent reforms to the wholesale regulatory regime. Other recent regulatory developments, the structural separation of Telstra and the transition to the National Broadband Network should further encourage retail competition.

More specifically, these developments are beginning to render the price caps on Basket 1 (various services) and Basket 4 (connection services) irrelevant. Telstra has consistently set prices for these services that are considerably lower than those permitted by the price caps, which suggests that it is being constrained by other factors such as consumer demand or competition between service providers. The ACCC therefore encourages the government to consider removing the price caps on Basket 1 and Basket 4.

In contrast, Telstra appears to be more readily constrained by the price caps on Basket 2 (residential line rental product) and Basket 3 (business line rental product). This suggests a case for retaining these price caps for some time.

The ACCC notes that many of the recommendations from its 2010 review of the retail price controls may still be relevant.

1. INTRODUCTION

The ACCC welcomes the opportunity to provide its views to the Department of Broadband, Communications and the Digital Economy (DBCDE) on the review of retail price control arrangements.

The ACCC is the independent statutory authority responsible for promoting competition and fair trade in the market place for the benefit of Australian consumers, businesses and the community. The ACCC is responsible for regulating aspects of the telecommunications industry through the telecommunications-specific regime in Parts XIB and XIC of the *Competition and Consumer Act 2010*.

The ACCC's responsibilities include the regulation of wholesale access to telecommunications through the competition access regime in Part XIC. This involves

determining which services should be regulated as well as setting price and non-price terms and conditions in 'access determinations' to encourage competition.

The ACCC has a monitoring and reporting role in relation to the retail price controls, as discussed further below. Under the current review, the DBCDE has specifically sought the ACCC's views on the terms of reference and competition-related issues.

This submission sets out the ACCC's views on the appropriate policy framework for retail price controls with the objective of promoting competition and delivering benefits to consumers.

2. ACCC ROLE IN THE RETAIL PRICE CONTROLS

The retail price control arrangements are outlined in the *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005* (the Determination). The Determination was made by the Minister under Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act). The Minister may direct Telstra to comply with the Determination if it does not do so.¹

The ACCC has two statutory roles in relation to the retail price controls.

First, under subsection 151CM(1) of the *Competition and Consumer Act 2010*, the ACCC is required to report annually to the Minister on Telstra's compliance with retail price controls. Clause 21 of the Determination provides for the ACCC to develop a methodology for this purpose.² Telstra provides the ACCC with an audited report on its compliance each year.³

Second, the ACCC has a procedural role in relation to price increases for residential line rental. Division 2 of the Determination provides that Telstra may not increase the price of a residential line rental service unless the ACCC has verified that Telstra has complied with specific obligations in Telstra's carrier licence conditions.⁴ The obligations require Telstra to have a low-income package that has been approved by low-income consumer advocacy groups and provided to the Australian Communications and Media Authority (ACMA).⁵ Telstra must provide resources to a 'Low-income Measures Assessment Committee' (LIMAC) and consult with LIMAC before making changes to its low-income package.⁶ The ACCC is not permitted to consider any other factors in relation to a proposed price increase.⁷

¹ Sections 155 and 159 of the TCPSS Act.

² The current *Methodology for administration of the Telstra carrier charges price control arrangements* issued in October 2010 is available at:
<http://www.accc.gov.au/content/index.phtml?itemId=957000>

³ *Methodology for administration of the Telstra carrier charges price control arrangements*, cl 6.3. Specific requirements for this audit report are spelt out in Attachment B to the methodology.

⁴ The obligations are set out in clause 22 of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*.

⁵ The low-income measures are set out in clause 22 of the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*.

⁶ *Ibid.*

⁷ Clause 28(c) of the Determination.

From time to time, the ACCC may be directed by the Minister under the *Telecommunications Act 1997* to hold public inquiries and provide advice on matters related to the telecommunications industry.⁸ The ACCC has reviewed the retail price controls on several occasions. The most recent review took place in March 2010, after the Minister directed the ACCC to provide advice based on the premise that the retail price controls would remain in place until mid-2012.⁹

3. POSSIBLE EFFECTS OF RETAIL PRICE CONTROLS

Retail price controls can potentially be used to achieve various policy objectives. It is important to understand the particular objectives to be supported in order to determine the most appropriate scope and structure for retail price controls.

The government's objectives for the retail price controls relate to both social and economic policy goals. More specifically, they are:

- to address a lack of competitive tension in Telstra's fixed-line service pricing
- to promote greater social equity in ensuring affordability of access to services
- to ensure that efficiency benefits are passed on to customers
- to safeguard low-income consumers.¹⁰

Social objectives

Price control arrangements can be used to achieve certain social policy/equity objectives. For example, they may be used to help consumers from different geographic areas and with different income levels to obtain access to affordable telecommunications. In this regard, retail price controls may provide a 'safety net' for vulnerable consumers, such as those in regional areas or low-income consumers.

The ACCC recognises that regulatory intervention may be required to meet these social objectives. However, policies that effectively promote competition may deliver outcomes consistent with these social objectives if consumers (including low income and vulnerable members of society) are able to benefit from the lower prices and/or improved quality of services.

As a general principle, the ACCC considers that a vibrant and competitive market for these services is likely to go a long way in supporting many of the specific outcomes sought under these objectives.

Economic objectives

Retail price controls may also be used to deliver lower prices for consumers in the absence of effective competition.

⁸ Section 496 of the *Telecommunications Act 1997* provides that the Minister may give the ACCC a written direction to hold a public inquiry about a specific matter. The ACCC must comply with the direction.

⁹ ACCC *Review of Telstra's price control arrangements – an ACCC report*, March 2010.

¹⁰ Explanatory Statement to *Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 (Amendment No. 1 of 2010)*.

In a market without effective competition, a dominant provider with market power will not face the same incentives as a firm facing strong competition. Price control arrangements can provide a number of benefits by creating these incentives to some degree. These benefits can relate to the promotion of efficiency and the avoidance of price shocks for consumers.

Retail price controls can be useful in promoting efficiency in three different ways:

- *Productive efficiency*

Where the market is serviced by a firm with market power, that firm may not have sufficient competitive pressure to find the least cost way of producing a good or service. This is because it can raise its prices to cover inefficient behaviour. Retail price controls can limit this ability to increase prices (or in fact, require price falls), thereby requiring the firm to reduce costs if it wishes to increase or maintain its profits.

- *Allocative efficiency*

A firm without effective competition will typically offer its services at a price that is above the cost of production. This represents a lost opportunity because some consumers will not buy the service despite valuing it more than the cost to produce it. Retail price controls may therefore improve allocative efficiency if they are able to keep the price of a service down closer to cost.

- *Dynamic efficiency*

The use of retail price controls can give a firm that has significant market power the incentive to invest and improve its productivity over time so that it will be able to meet—or exceed—its price cap obligations in future.

Retail price controls can also benefit consumers by protecting them from significant price increases in the one period. This provides consumers with some degree of certainty about future prices. This benefit can be limited, however, by the ability for the regulated firm to carry-over credits from one period to another.

Risks of retail price controls

There is a risk that price controls, if incorrectly applied, will harm consumers by constraining investment by Telstra and the provision of services by competitors. This will adversely affect the availability, choice and quality of services to consumers.

- *Effects on economically efficient investment decisions*

In certain circumstances, retail price controls may discourage efficient investment decisions as Telstra would be unable to recover its costs, inclusive of a reasonable rate of return. While other regulatory obligations on Telstra such as the availability of services (the universal service obligation), timely repair of faults (the customer service guarantee) and maintenance of the network (the network reliability framework) necessitate a minimum level of investment in the network,

if set too low, retail price controls could discourage additional efficient investment which, if undertaken, could have delivered benefits to consumers.

Effects on competition

Retail price controls have the potential to inhibit competition if they are too prescriptive and foreclose efficient competitors. A price cap that places a strong restriction on retail prices will reduce the prices that access seekers are able to charge in order to be competitive with Telstra. If price caps are set too low, access seekers will not be able to gain a market return on their investments. In such circumstances, they may therefore be less likely to expand their operations into new geographic areas or invest in new equipment or technology. This would reduce the likelihood of vigorous competition and effective constraints on Telstra.

For these reasons, retail price controls should only be imposed where the benefits are clearly delivering desired outcomes and objectives and outweigh the detriment caused.

4. WHETHER RETAIL PRICE CONTROLS SHOULD BE RETAINED

Competitive developments in the telecommunications sector suggest that the government should begin phasing out the retail price control arrangements. This is particularly the case for the services covered by price caps on Baskets 1 and 4, for which Telstra appears constrained by competitive forces rather than the price caps. In contrast, there appear to be stronger arguments for retaining the price caps on Baskets 2 and 3. These matters are discussed below.

Competition and the need to regulate retail prices

As discussed above, a key reason for the introduction of retail price controls is that the level of competition in the market is not sufficient to act as a constraint on Telstra. A number of competitive developments within the sector may provide reasons for the government to be more confident in the market to begin providing such a constraint in the next few years.

Increasing competition

Competition in the market for fixed voice services has increased since the current price caps were set in 2005. There has been a continuing expansion in the use of the unconditioned local loop service (ULLS) for infrastructure-based competition.

The decrease in prices paid for public switched telephone network (PSTN) services is also consistent with increased competition. The ACCC's report, *Changes in the prices paid for telecommunications services in Australia 2009-10*, shows a steady downward trend. According to this report, the average annual fall in prices in real terms of fixed line voice services for residential customers during the period of the current retail price control arrangements was 5.4 per cent.¹¹ Although basic access prices remained largely steady (down just 0.9 per cent annually), the average annual decrease in prices

¹¹ ACCC, *Changes in the prices paid for telecommunications services 2009-10*, September 2011, p 101. This is the average of the annual decrease in prices over the period covered by the financial years 2005-06 to 2009-10.

for local (7.2 per cent), national long-distance (9.9 per cent), international (8.6 per cent), and fixed-to-mobile calls (9.6 per cent) was significant.

The overall price drop for these services, which effectively make up the services in Basket 1, may be contrasted with the nominal price freeze provided by the retail price controls (CPI – CPI). The rate of inflation meant that the retail price controls required the average price for Basket 1 to decline by 3.1 per cent in real terms in 2009-10 (ignoring carry-in credits from previous years).¹²

Recent reforms in wholesale regulation

The presence of extensive regulation at the wholesale level through the access regime in Part XIC of the *Competition and Consumer Act 2010* (including the ACCC's increased power to make multi-lateral price setting determinations) reduces the need for regulation of retail prices. The regime requires network owners such as Telstra to provide access to bottleneck infrastructure under standard access obligations.

The regime has been amended as part of the industry reforms that took place in late 2010.¹³ These reforms give the ACCC the power to make up-front access determinations that will provide a regulatory backstop for access seekers in relation to price and non-price terms for the supply of declared services such as wholesale line rental, ULLS, PSTN OTA services and local carriage service. These are expected to reduce barriers to entry for competitors seeking to expand the geographic coverage of their fixed line voice services using Telstra's copper network, both during the migration period and in the long term for areas outside the fibre footprint.

Transition to the NBN

There are also significant structural changes taking place in the Australian communications industry that may reduce the need for retail price controls. In particular, the transition to the NBN is expected to drive competition in fixed services because it will offer open access services to all access seekers on non-discriminatory terms. As a wholesale-only network, the NBN will not have the incentives to frustrate access by competitors in order to benefit its own retail operations. The level playing field offered by the transition could be expected to encourage competitors to expand their operations and therefore deliver lower prices for consumers through infrastructure-based competition.

As a ubiquitous customer access network with uniform national pricing, the NBN will offer access seekers a level playing field as well as supporting equity in pricing between metropolitan and non-metropolitan customers. This has the potential to reduce the need for specific retail price controls mandating equivalent pricing in metropolitan and other areas.

Structural separation of Telstra

The other significant ongoing change in the industry is the structural separation of Telstra. As a vertically integrated access provider to the ubiquitous customer access network, Telstra has retained its incentive and ability to engage in both price and non-

¹² ACCC, *Telstra's compliance with the price control arrangements – 1 July 2009 to 30 June 2010*, 28 March 2011, p 7.

¹³ *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*.

price discrimination in favour of its retail business units.¹⁴ In relation to fixed voice services, Telstra supplies access to bottleneck infrastructure required by access seekers while also competing with the same access seekers at the retail level. This vertical integration has given Telstra's retail operations an advantage in competing against access seekers in the past.

The telecommunications reforms that were passed in late 2010 gave Telstra a choice between structural separation and functional separation.¹⁵ Telstra has submitted a structural separation undertaking to the ACCC that, if accepted, would provide for the decommissioning of its copper and hybrid fibre-coaxial networks and migration of its customers to the NBN over time. During this transition, Telstra must put in place interim equivalence and transparency measures to ensure that access seekers have access to essential business inputs on equivalent terms and conditions to Telstra's retail operations.¹⁶

If the ACCC accepts Telstra's structural separation undertaking, it is expected that structural separation would reduce Telstra's market power in fixed line voice services because it will no longer own or control the only ubiquitous customer access network. As a result, access seekers will not be required to negotiate with a direct competitor for access to declared services. In the meantime, the interim equivalence and transparency measures are intended to provide protection for access seekers.

If Telstra's market power is reduced by these changes in the future, this will lessen the need for retail price control arrangements.

Effectiveness of current retail price controls

It appears that some aspects of the retail price control arrangements will be less necessary in the future given competitive developments and changes in consumer demand for the relevant fixed line services.

Effectiveness of the retail price caps

The ACCC's annual reports to the Minister on Telstra's compliance with the retail price controls show that Telstra has consistently set prices that are lower than those permitted by the price caps. Figure 1 shows the percentage difference between the change in price for each basket in each reporting period and the price change that was permitted under the price caps (the surplus). It is possible for the surplus to build up over different regulatory periods.

¹⁴ ACCC, *Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan – Discussion Paper*, p. 69.

¹⁵ *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*, Schedule 1, Part 1.

¹⁶ These measures are part of the requirements that Telstra must meet in order for the ACCC to approve its structural separation undertaking. Further information is available at <http://www.accc.gov.au/content/index.phtml/itemId/1003999>

Figure 1: Surpluses for the four baskets¹⁷

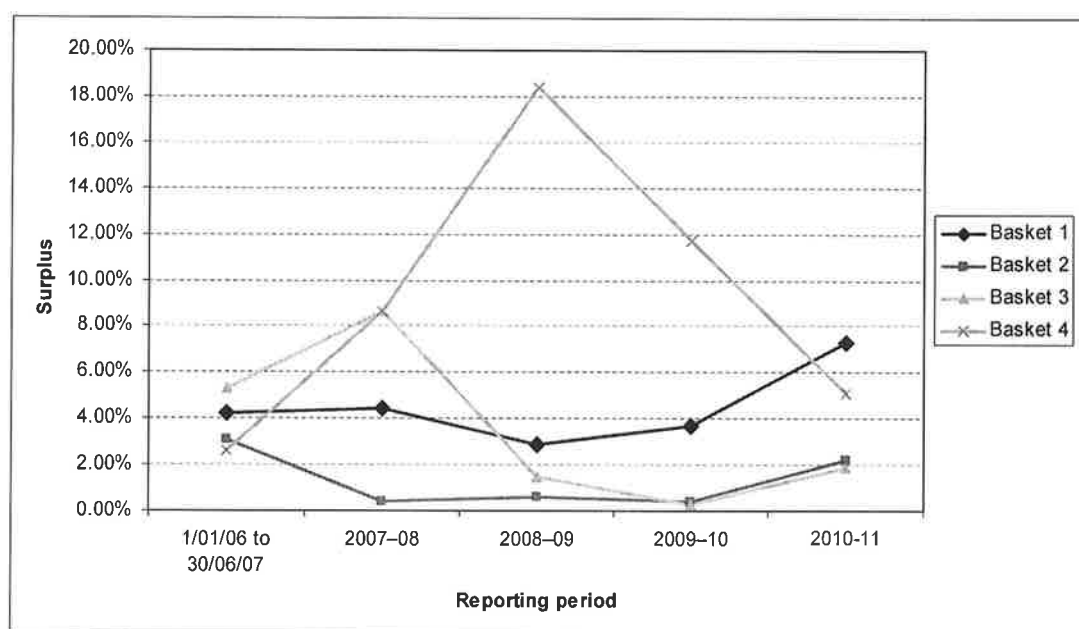


Figure 1 shows that the 2010–11 surplus was particularly significant for Baskets 1 and 4. The surplus for Basket 1 (7.3 per cent) is particularly important because it covers the broadest basket of services and accounts for the most revenue of the four baskets by far. Although Basket 1 is subject to a nominal price freeze, the prices paid for services in the basket fell by 3.6 per cent during the year. This represents a large amount of foregone revenue if Telstra was only constrained by the price caps.

The surplus for Basket 4 was also quite large (5.1 per cent) in 2010-11. The surplus for this basket was as high as 18.4 per cent in 2008-09.¹⁸

The surpluses for baskets that relate to particular line rental services (Baskets 2 and 3) were less pronounced (2.2 per cent and 1.9 per cent respectively in 2010-11). This suggests that Telstra may be more constrained by the retail price controls in setting these prices.

Changes in consumer demand for services

Given that the retail price controls apply only to fixed voice services, their benefits should be evaluated in the context of the decline in the number of services in operation.¹⁹ It is possible that the benefits of the retail price controls could be reduced if changes in technology and consumer demand result in lower usage of fixed voice services in the future.

It is clear that consumer take-up of fixed voice services has declined steadily over a number of years.²⁰ The number of Australians without a fixed-line telephone at home

¹⁷ ACCC, *Telstra's compliance with the price control arrangements – 1 July 2010 to 30 June 2011*, not yet published.

¹⁸ ACCC, *Telstra's compliance with the price control arrangements – 1 July 2009 to 30 June 2010*, March 2011, p.7

¹⁹ ACCC, *Telecommunications competitive safeguards for 2009-10*, September 2011, p 19.

²⁰ ACMA, *Communications report 2009-10*, December 2010, p 14.

was estimated at 2.3 million at 30 June 2010, an increase of 35 per cent during 2009-10.²¹ Consumers are increasingly using alternative, unregulated services for voice calls, such as mobile phone and voice over internet protocol (VoIP) services.²² The number of mobile phones has doubled since 2001-02 to 26.0 million SIOs, coupled with increased use of mobile services for voice calls.²³ It is likely that the convenience of mobility and overall narrowing of price differentials has led consumers to increase their use of mobile services, despite the lack of protection under retail price controls.²⁴

In relation to alternative fixed services, the ACCC notes that the number of Australians using VoIP increased by 16 per cent from 2.5 million to 2.9 million during 2009-10.²⁵ The availability of ubiquitous broadband through the NBN may accelerate the spread of VoIP services. This would be consistent with the existing trend towards increased consumption of bundles of telecommunications services by consumers, particularly bundles that include both VoIP and fixed internet services.²⁶

The take-up of VoIP is particularly relevant when considering the future of the retail price control that sets a maximum price of 22 cents per call for local calls and Basket 1 in general. Telstra charges for local calls on an untimed basis at rates up to 30 cents per call, depending on the cost of the accompanying line rental.²⁷ However, VoIP services not only offer local calls at substantially cheaper per-call rates for a given monthly charge, but also offer national long-distance calls for the same rate as local calls.

Another relevant development in the market has been the increased use of 'bucket' plans that include an allowance of calls with line rental. These plans can effectively lower the cost for local calls as well as charge long-distance (and sometimes international) calls at untimed rates. These plans also have the effect of removing some of the link between specific call prices and what a consumer pays each month. Given these market developments, it may no longer be useful to set a specific price for untimed local calls. It is even possible that the concept of an 'untimed local call' may become irrelevant in the future if all calls to fixed networks within Australia are charged at a standard flat rate.

Conclusion on the need for retail price control arrangements

The ACCC considers that the government should begin phasing out the retail price control arrangements. Competition in the retail fixed voice market has continued to increase on the back of recent reforms to the wholesale regulatory regime. Other recent regulatory developments and the transition to the NBN should further encourage retail competition.

²¹ Ibid, p 30.

²² Ibid, p 14.

²³ ACCC, *Telecommunications competitive safeguards for 2009-10*, September 2011, p 17.

²⁴ ACMA, *Communications report 2009-10*, December 2010, p 14.

²⁵ Ibid.

²⁶ ACMA, *2009-10 Communications report series: Report 2—Take-up and use of voice services by Australian consumers*, November 2010, p 26-27.

²⁷ Telstra is permitted to charge more than 22 cents per call as part of a bundle with line rental lower than the standard plan.

More specifically, these developments are beginning to render the price caps on Baskets 1 and 4 irrelevant. The ACCC therefore encourages the government to remove these price caps.

In contrast, Telstra appears to be more readily constrained by the price caps on Baskets 2 and 3. This suggests a case for retaining these price caps for some time.

That said, the ACCC recognises that there may be social policy reasons for retaining certain aspects of the retail price controls.

5. VIEWS ON OTHER MATTERS

Although the ACCC considers that it is time to begin phasing out the retail price control arrangements, the ACCC recognises that the government may choose to retain them. The ACCC therefore makes the following comments on specific aspects of the retail price controls.

Fixed-to-mobile calls

In the ACCC's 2007 and 2009 Mobile Terminating Access Service (MTAS) Pricing Principles Determination inquiries and the 2011 MTAS access determination inquiry, submitters expressed concern about the retail prices for fixed-to-mobile (FTM) calls. These submissions can be found on the ACCC website.²⁸ The MTAS is a wholesale input to FTM calls and in a competitive market, it would be expected that reductions in the MTAS rate would lead to reductions in retail FTM prices. This is known as 'pass-through'. However, submitters argued that reductions in regulated MTAS rates have not been completely passed through into lower FTM prices for consumers.

In the 2007 MTAS Pricing Principles Determination, the ACCC acknowledged that pass-through of MTAS reductions to FTM retail prices had occurred, but the extent of pass-through could be improved. It encouraged integrated carriers to continue passing through lower MTAS rates to FTM retail rates.²⁹

In the 2009 MTAS Pricing Principles Determination however, the ACCC expressed its disappointment with the level of FTM pass-through. The ACCC noted that additional regulatory mechanisms might be necessary to achieve a greater level of pass-through and cited retail price control sub caps as an example of such a mechanism.³⁰ In its 2011 MTAS draft final access determination, the ACCC noted that interested stakeholders have the option to make a submission to the government's retail price controls review on whether a sub cap for FTM calls is appropriate. The government may wish to give consideration to such a sub-cap as part of this review.

The ACCC notes, however, that consumers generally purchase their communications services in a bundle, with FTM services being just one component. Therefore, it is possible that the effect of imposing a sub-cap on FTM calls may be offset by price

²⁸ <http://www.accc.gov.au/content/index.phtml/itemId/783052>;
<http://www.accc.gov.au/content/index.phtml/itemId/854270>;
<http://www.accc.gov.au/content/index.phtml/itemId/1000778>

²⁹ ACCC, *MTAS Pricing Principles Determination 1 July 2007 to 31 December 2008—Report*, November 2007, p. 120.

³⁰ ACCC, *Domestic Mobile Terminating Access Service Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011*, March 2009, p. 24.

increases for other elements of the bundle. The effect of bundling also makes it difficult to definitively quantify the current extent of pass-through occurring in the market.

Recommendations from the ACCC review in 2010

In the event that the government retains the retail price control arrangements, the ACCC considers that the following recommendations from its 2010 review are still valid.

Removal of carry-in credits

Under the current price control arrangements, if the price movement in any basket of services is lower than the price cap imposed, Telstra accumulates 'credits' equal to the difference. Telstra is able to carry over these credits into the next year of the price control period, increasing the level of the price caps by the amount of the credits. As a result, these 'carry-in credits' may accumulate over a number of years.

In its 2010 review of the retail price controls,³¹ the ACCC recommended that there should be no carry-in credits from the previous price control period because price targets should be set on a forward-looking basis. The existence of carry-in credits from an earlier period would undermine the objectives of protecting consumers from unjustified price increases in the current price control period.

The increasing surpluses reported by Telstra under the existing price controls reinforce the ACCC's recommendation that carry-in credits should be removed. For example, Telstra was able to increase prices for Basket 4 (connections) by as much as 8.9 per cent in 2010-11 and yet still remain 5.1 per cent under the limit imposed by the price controls. This was because of a high carry-in surplus that had built up over a number of years.

Removal of special line rental for schools

The ACCC also recommended that the requirement placed on Telstra to offer line rentals to schools at a price at, or below, the standard line rental offered to residential customers should be removed.³² This recommendation was made because the ACCC considered it to be more appropriate for the government to provide direct subsidies to schools.

As noted in the 2010 report, direct subsidies are likely to be more efficient because they can be used to provide targeted benefits to schools with specific needs. They also minimise the potential for efficiency losses, given the existing arrangements for government funding to be provided to schools.

³¹ ACCC, *Review of Telstra's price control arrangements*, March 2010, p. 11.

³² *Review of Telstra's price control arrangements* (March 2010) p 36-37.

Removal of the procedural requirement for the ACCC to check Telstra's maintenance of the low-income package

Under the current price control arrangements, the ACCC is required to check Telstra's compliance with the low income measures specified in Telstra's carrier licence³³ when Telstra is seeking to increase the price of residential line rental. This requirement is merely procedural in nature. The ACCC is required to check if Telstra has adequately resourced the Low Income Measures Assessment Committee (LIMAC) and consulted with LIMAC in developing a low-income package. The ACCC is not permitted to consider any factors other than the low income measures in deciding whether to approve the price increase.³⁴

The ACCC noted in its 2010 review of the retail price controls that this verification process does not provide additional assurance that Telstra will comply with those requirements. Telstra's compliance with these requirements is and will continue to be subject to ACMA oversight (i.e. ACMA has standing to enforce the relevant licence conditions). Further, ACMA attends the LIMAC meetings and is otherwise well placed to assess Telstra's compliance with this licence condition. Accordingly, the ACCC does not consider that the ACCC's approval process delivers any benefit to consumers.

Directory assistance charges

Currently, directory assistance charges are not subject to a price cap. However, the retail price controls state that any changes to these charges are subject to Ministerial disallowance under s. 157 of the TCPSS Act. If the Minister considers that an alteration to directory assistance charges is not in the public interest (for which the Minister seeks ACCC advice), the Minister may issue a written direction to Telstra to prevent the alteration in charges. This acts as a de facto price cap.

Currently, Telstra charges zero cents for residential customers and 50 cents for mobile and business customers for calls to directory assistance on the number '1223'. Telstra also supplies other service providers with wholesale access to this service.³⁵ The de facto price cap on Telstra's directory assistance charges is clearly below the cost of supplying the service for residential customers. Removal of the cap or setting a specific price cap based on cost recovery could therefore encourage new suppliers to enter the market for directory assistance services.

The ACCC recommends that requirement to obtain Ministerial consent to increase the charge for directory assistance should be removed, with these calls instead being subject to a specified price cap of 50 cents. Given that Telstra currently charges business and mobile users 50 cents for this service, the ACCC considers that it would be reasonable to consider that this charge would permit efficient cost recovery.

³³ *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*, cl 22.

³⁴ Clause 28 of the Declaration.

³⁵ CSPs must provide directory assistance services to customers with a standard telephone service under the service provider rules in Part 2 of Schedule 2 of the *Telecommunications Act 1997*.

Remove duplication of 'extended zones' that are already covered by contract

The current retail price controls require Telstra to comply with its obligations in relation to any contract that Telstra may have with the government in relation to 'extended zones'. Extended zones are areas that fall outside Telstra's standard local call charging zones.³⁶ They are located in the most sparsely populated areas of Australia. Under its agreement with the government, Telstra is required to charge for calls within an extended zone and between adjacent zones as untimed local calls. Telstra must also ensure that customers in extended zones have dial-up access to at least one ISP at untimed local call rates.³⁷

Extended zones are generally in areas with relatively few customers, and as such it is likely that calls charged in extended zones at a similar price as an untimed local call might not allow Telstra to recover the costs of providing this service. In its 2010 report, the ACCC recommended removing the price control arrangements as they apply to extended zones, where these requirements merely replicate Telstra's contractual arrangements with government.

Regulatory oversight

The ACCC does not consider that changes are required in relation to regulatory oversight of the retail price controls. In particular, the ACCC's monitoring and reporting role is consistent with the ACCC's obligation to report annually on competitive safeguards in the telecommunications industry and changes in the prices paid for telecommunications services in Australia.

However, as discussed above, the ACCC considers that the procedural requirement for the ACCC to check Telstra's compliance with the low-income package requirements (when Telstra proposes to increase the price of residential line rental) effectively duplicates arrangements that are administered by the ACMA. It would be preferable that this requirement to be removed.

6. CONCLUSION

The ACCC considers that the government should begin phasing out the retail price control arrangements. Competition in the retail fixed voice market has continued to increase on the back of recent reforms to the wholesale regulatory regime. Other reforms to the regulatory regime, the structural separation of Telstra and the transition to the NBN will further encourage retail competition.

More specifically, competition appears to be the primary constraint in relation to services covered by Baskets 1 and 4. The ACCC therefore encourages the government to remove the price caps on these baskets.

In contrast, the price caps on Baskets 2 and 3 still appear to be influencing Telstra's pricing of the relevant line rental products. This suggests that these price caps could be retained for some time.

³⁶ ACMA, *Extended zones FAQs*, March 2009, http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_1785

³⁷ Ibid.

Finally, the ACCC notes that many of the recommendations from its 2010 review of the retail price controls may still be relevant.

