



Retail Price Controls Review

Submission to the Department of Broadband, Communications and the Digital Economy



November 2011



About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

Contact:

Jonathan Gadir, Senior Policy Adviser
Erin Turner, Policy Assistant

Suite 402, Level 4
55 Mountain Street
Ultimo NSW, 2007
Email: jonathan.gadir@accan.org.au
Phone: (02) 9288 4000
Fax: (02) 9288 4019
TTY: 9281 5322

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

It is ACCAN's view that assumptions about the state of the telecommunications market which are contained in the questions of the Retail Price Controls Discussion Paper are premature. The NBN may indeed have a transformative effect on the telecommunications market, but the "NBN environment" is still far off. Assuming the NBN rollout proceeds according to current government policy, it will still not exist in some places for ten years. Telstra also retains a continuing special status in areas outside the NBN fibre footprint as the sole infrastructure owner and largely the only retail service provider.

Telstra is likely to retain market power in short and medium term. For the NBN transition and immediate aftermath, industry players have pointed out that the rollout of the NBN and the structural separation does not reduce Telstra's retail market power by itself.¹ Exchanges where Telstra now has a 90 percent market share are not likely to dramatically change in the next five years.

The statement in the Discussion Paper that the NBN "will drive more vigorous competition between retail service providers" and "the market is likely to be more effective in preventing instances of significant price increases" would appear to be an expectation that may not eventuate for a period of time, particularly for non-urban areas of the country. Our expectation is that a more competitive environment will eventuate, at which point a discussion about retail price controls may be appropriate, but at this time we do not support the removal of the safety net protection.

Future government policy change regarding the NBN rollout is an additional factor that may affect Telstra's retail pricing power.

Weak arguments against regulated caps. As the Discussion Paper points out, relevant Telstra pricing has been below the regulated caps. Even so, Optus is cited in the Discussion Paper arguing that retail price controls poison the competitive market by dampening incentives for competitive entry. However if there is any real world evidence that the existence of regulated caps in this scenario causes consumer detriment, we have yet to see it. Such arguments rely heavily on theoretical assumptions. Furthermore, if retail pricing is below the regulated caps, it cannot be read from that fact that regulated caps are automatically unnecessary.

The arguments in the Optus submission citing the UK situation are largely irrelevant to the Australian market. In Australia, an open access network environment will achieve what is being claimed only if Telstra's retail pricing constructs are constrained by sufficient competition. There is scant evidence of such competition in large parts of Australia.

¹ Twisted Wire Podcast, ZDNet, 27 October 2011 <http://www.zdnet.com.au/primus-chief-fights-against-forced-fibre-339325037.htm>

Untimed local calls. The Discussion Paper says that “the government does not intend to suggest that such long-standing concepts as the untimed local call requirement” will not continue. However it is not explained why this particular aspect of price controls is fundamentally different from the others. The Discussion Paper also does not explain how untimed local calls would be preserved if the retail price controls were to be lifted.

It is premature to assume the necessary conditions for lifting price controls. It is far too early in the life of the NBN rollout to know what effect it will have on the market power of Telstra in the short to medium term. The adequacy of the Structural Separation Undertaking for example, continues to be debated.

In the presence of uncertainty, the Government should err on the side of caution. The worst that might be said is the price controls will gradually lose relevance. This is not a problem for consumers. However, a premature lifting of the controls based on expectations from economic theory entails unnecessary risks of price rises for consumers.

Price controls during NBN deployment. In addition, the Discussion Paper asks whether price controls should remain in place for services over the copper network during the NBN deployment without an explanation of why the NBN being deployed is relevant to, or should have any bearing on, the market in areas that have not yet been reached by that deployment and remain on the copper.

The Discussion Paper mentions that a standalone ‘anchor’ voice product providing access to a fixed-line voice service at a regulated rate might be better or more transparent for consumers during the migration period. While ACCAN wants to work with the Government to ensure that voice-only prices do not rise, we do not have a clear understanding of what is meant by this and would need to see more detail.

Low-income consumers and LIMAC

As the Discussion Paper states, targeted low-income measures have worked in tandem with the broader application of retail price controls. It is ACCAN’s view that the arguments from the Productivity Commission against retail price regulation as a tool for protecting low-income consumers, are based on broad ideological preferences and economic models at a high level of abstraction, not on the real world telecommunications market in Australia.

During and after the NBN rollout, the role that LIMAC performs will continue to be crucial. However, it is not necessary for this role to be performed by a body attached to Telstra. A start can be made on creating an equivalent advisory committee that stands apart from Telstra and that would oversee low income measures from any retail provider.

The Government should also consider the expansion of low-income measures to facilitate access to broadband services.

Extended Zones

There is a continuing need for regulated arrangements to provide untimed calls within and between adjacent extended zones.

There is obvious value in maintaining extended zones, which cover over 80% of Australia's land mass and apply to more than 40,000 services.² The extended zones arrangement recognises the reality of rural Australia where the closest neighbour may be well outside of a standard zone unit.

Throughout rural Australia Telstra is either the dominant or primary provider for phone and internet services. As discussed above, these areas may remain untouched by genuine competition.

New role for price controls

Fixed to mobile retail prices. There is a body of evidence demonstrating that the retail price to call mobiles from fixed-line services is too high and is inflating profits for fixed line operators, particularly Telstra, instead of reflecting an efficient price.³

Earlier this year the ACCC proposed a pass through mechanism as part of the Mobile Terminating Access Service (MTAS) Final Access Determination (FAD).⁴ This change would have addressed wholesale interconnect arrangements but would ultimately have impacted on retail pricing, resulting in cheaper fixed to mobile calls for consumers.

Most recently, the ACCC has announced that the MTAS FAD will not include a fixed to mobile pass through mechanism.⁵ However nearly all submissions to the draft FAD with the exception of Telstra and Primus argued that the ACCC should address fixed to mobile pass through as originally proposed.⁶ The ACCC has yet to release a final draft of the MTAS FAD and the issue remains unresolved.

Without Government or regulator initiated action it is likely that consumer detriment will continue.⁷ As the ACCC lowers the rate of the MTAS, price reductions "are likely to be retained by [fixed-line] providers in the form of increased margins with further detrimental impacts on consumer welfare".⁸ It would be unfortunate for this issue to remain unresolved.

ACCAN maintains that an ACCC MTAS FAD is the most appropriate mechanism to address the problem of fixed to mobile call rates. However, we would expect the issue to be addressed via retail price controls as suggested by the ACCC if our preferred mechanism is not taken up.

² ACMA, 'Extended Zones FAQ', available at:

http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_1785

³ See ACCC, *Domestic Mobile Terminating Access Service (MTAS) Public Inquiry to make an Access Determination*, June 2011 AND Analysys Mason, *Regulatory treatment of fixed-to-mobile passthrough*, October 2009 and ACCC, *Domestic Mobile Terminating Access Service Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011*, March 2009

⁴ ACCC, *Domestic Mobile Terminating Access Service (MTAS) Public Inquiry to make an Access Determination*, June 2011

⁵ ACCC, *Inquiry to make a final access determination for the Domestic Mobile Terminating Access Service (MTAS) Draft Access Determination Explanatory Statement*, 23 September 2011

⁶ See submissions from AAPT, ACCAN, Macquarie Telecom, Optus and Vodafone available at:

<http://www.accc.gov.au/content/index.phtml/itemId/1013979>

⁷ A full discussion of the consumer detriment experienced through inflated fixed to mobile retail prices can be found in ACCAN's initial submission to the ACCC

⁸ ACCC, *Domestic Mobile Terminating Access Service (MTAS) Public Inquiry to make an Access Determination*, June 2011, pp. 6-7.



Free and local rate numbers – business retail market. The ACMA has proposed altering the definition of free and local rate numbers (FLRN, i.e. 1800 and 13/1300 numbers) in the Numbering Plan so that they will be free to call or low cost to call from a mobile phone. The changes proposed by the ACMA mean that mobile service providers will no longer collect revenue from the caller for mobile to FLRN calls. Interconnect and access arrangements between service providers are therefore likely to require regulatory attention.

ACCAN is concerned that mobile providers will raise the origination access fees they charge FLRN carriers to high levels to compensate for lost revenue instead of adopting a cost recovery models. Equally we are concerned that the costs for small business and charitable users of FLRNs, who already pay to receive calls, may be unfairly increased.

The Department should be aware of this emerging price issue and should develop a position on whether fair and transparent prices for the business FLRN retail market would be best achieved by direct retail price controls or through the ACCC's declaration of an access service for mobile originating calls.