

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).