



Telstra corporate restructure: Minor variations to certain Record Keeping Rules, the Final Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services

Decision paper

December 2022

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Executive summary

The ACCC has concluded its consultation relating to changes required to a number of regulatory instruments to reflect the 2023 Telstra restructure.

The changes to Telstra's structure involve a reallocation of the company's assets and business functions across new and existing subsidiaries. To ensure that the relevant regulatory instruments impose obligations on the correct Telstra entity, minor variations are required to:

- the following Record Keeping Rules (RKR):
 - Telstra Customer Access Network RKR
 - Division 12 RKR
 - Internet Activity RKR
 - Audit of Telecommunications Infrastructure Assets RKR
- the Final Access Determinations Nos. 1-7 of 2019 for Fixed Line Services (FADs)
- the Interim Access Determination No. 1 of 2021 for Superfast Broadband Access Service (IAD).

The variations to the RKRs will come into effect on the day that Schedules 2 and 3 of the *Telstra Corporation and Other Legislation Amendment Act 2021* come into effect.

The variations to the FADs and IAD will come into effect on 1 January 2023.

1. Introduction

In mid-2022, Telstra notified the Australian Competition and Consumer Commission (ACCC) that minor variations are required to some record-keeping rules and access determinations to reflect its impending corporate restructure. The changes to Telstra's structure involve a reallocation of the company's assets and business functions across new and existing subsidiaries. Minor variations are therefore required to ensure that the relevant regulatory instruments refer to the correct demerged Telstra company.

2. Consultation process

In a consultation paper published on 30 November 2022, the ACCC detailed proposed minor variations to the relevant instruments to reflect Telstra's new structure. We sought stakeholders' comments on the proposed changes, and on when the changes should come into effect. Submissions closed on 14 December 2022.

One submission was received in response to the consultation process. This submission was from Telstra Corporation Limited.¹

3. Changes to the record keeping rules

3.1. Telstra Customer Access Network RKR

The Telstra Customer Access Network RKR (CAN RKR) was first made in September 2007 and has not been amended since. The Telstra CAN RKR collects quarterly information on the number of services in operation running on Telstra's legacy copper network.

The report includes details on the number and location of voice-only, voice and DSL and DSL-only services provided by Telstra and other retail service providers of voice and data services still running on Telstra's copper access network. As part of these rules, Telstra is also required to provide a snapshot of the data for public release.

3.1.1. ACCC consultation paper

The minor variations to the CAN RKR proposed in the ACCC consultation paper included replacing Telstra Corporation Limited (ACN 051 775 556) with Telstra Limited (ACN 086 174 781) as the record keeper reporting under that RKR. This change reflects the fact that Telstra's retail and wholesale operations of fixed, data, mobility, and wireless services, among other services, will be transferred to Telstra Limited following the restructure.² Further minor variations were also proposed to remove references to the *Trade Practices Act 1974* and replace them with references to the *Competition and Consumer Act 2010*.

3.1.2. Submissions

Telstra's submission supported the minor variations proposed by the ACCC.³

¹ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022.

² Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022 p.11.

³ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022, p.3.

3.1.3. ACCC decision

Following consideration of the submission received, the ACCC decided to vary the CAN RKR as proposed in the consultation paper. The varied CAN RKR is attached as Appendix A.

3.2. Division 12 RKR

The Division 12 RKR was first issued in December 2004 and was subsequently reviewed in April 2009, August 2010, July 2013, December 2020 and May 2022. The current Division 12 RKR collects information on fixed voice, mobile and internet services on an annual (financial year) basis from Telstra, Optus, iiNet, TPG Corporation, TPG Telecom, and Vocus Group.

Data collected under the Division 12 RKR relates to services in operation, revenue, call minutes, number of calls, and includes bill sample information. A subset of the information collected is published in the ACCC's annual Communications Market Report.

3.2.1. ACCC consultation paper

The minor variations to the Division 12 RKR proposed in the ACCC consultation paper were to replace references to Telstra Corporation Limited (ACN 051 775 556) with Telstra Limited (ACN 086 174 781) as the record keeper reporting under this RKR. This change reflects the fact that Telstra's retail and wholesale operations of fixed, data, mobility, and wireless services, among other services, will be transferred to Telstra Limited.⁴

3.2.2. Submissions

Telstra's submission supported the minor variations proposed by the ACCC.⁵

3.2.3. ACCC decision

Following consideration of the submission received, the ACCC decided to vary the Division 12 RKR as proposed in the consultation paper. The varied Division 12 RKR is attached as Appendix B.

3.3. Audit of Telecommunications Infrastructure Assets RKR

The Audit of Telecommunications Infrastructure Assets RKR was first issued in December 2007 and has been varied a number of times since it was first made, generally to expand reporting requirements and update the list of reporting entities. It requires 24 specified carriers, including Telstra, to report on the extent and location of their core network and customer access network infrastructure, as well as leased infrastructure or infrastructure operated on behalf of third parties.

3.3.1. ACCC consultation paper

The minor variations proposed to the Audit of Telecommunications Infrastructure Assets RKR in the ACCC consultation paper adds Telstra Limited (ACN 086 174 781) to the list of record keepers in addition to Telstra Corporation Limited (ACN 051 775 556). This variation reflects that, following the restructure, ownership of part of the reportable assets under these

⁴ Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022 p.11.

⁵ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022, p.3.

rules will continue to be held by Telstra Corporation Limited, while the remaining reportable assets will be transferred to Telstra Limited.⁶

3.3.2. Submissions

Telstra's submission supported the minor variations proposed by the ACCC.⁷

3.3.3. ACCC decision

Following consideration of the submission received, the ACCC decided to vary the Audit of Telecommunications Infrastructure Assets RKR as proposed in the consultation paper. The varied Audit of Telecommunications Infrastructure Assets RKR is attached as Appendix C.

3.4. Internet Activity RKR

The Internet Activity RKR was issued in December 2018 and revised in December 2020 and May 2022. It collects information bi-annually from 13 retail service providers including Telstra.

Information gathered under the Internet Activity RKR includes the number of retail services in operation in terms of access connection, wholesale speed tier, and the volume of data downloaded across NBN, non-NBN fixed, and mobile services. The full suite of information collected under the RKR is released as part of the Internet Activity Report.

3.4.1. ACCC consultation paper

The minor variations proposed to the Internet Activity RKR in the ACCC consultation paper were to replace references to Telstra Corporation Limited (ACN 051 775 556) with Telstra Limited (ACN 086 174 781) as the record keeper reporting under this RKR. This change reflects the fact that Telstra's retail and wholesale operations of fixed, data, mobility, and wireless services, among other services, will be transferred to Telstra Limited.⁸

3.4.2. Submissions

Telstra's submission supported the minor variations proposed by the ACCC.⁹

3.4.3. ACCC decision

Following consideration of the submission received, the ACCC decided to vary the Internet Activity RKR as proposed in the consultation paper. The varied Internet Activity RKR is attached as Appendix D.

⁶ Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022 p.11.

⁷ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022, p.3.

⁸ Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022 p.11.

⁹ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022, p.3.

4. Changes required to the access determinations

4.1. Final Access Determinations Nos. 1 to 7 of 2019 for Fixed Line Services

On 1 November 2019, the ACCC released its decision to make FADs for 7 declared fixed line services, namely:

- line sharing service
- local carriage service
- fixed originating access service
- fixed terminating access service
- unconditioned local loop service
- wholesale line rental
- wholesale ADSL service.

These were published as one document, namely the Final Access Determinations Nos. 1 to 7 of 2019 for Fixed Line Services.¹⁰ The FADs commenced on 15 November 2019 and apply until 30 June 2024.

The declared fixed line services are mainly supplied by Telstra over its copper public switched telephone network and digital subscriber line network. They form an important input used by retail service providers to supply voice and broadband services to downstream fixed telecommunications markets.

4.1.1. ACCC consultation paper

The minor variations proposed to the FADs for fixed line services in the ACCC consultation paper include the insertion of definitions of 'Telstra Provider' and 'demerged Telstra Companies.' The minor variations also replace various references to 'Telstra' with 'Telstra Provider' for clarity around the specific entity being referred to at relevant points throughout the FADs.

4.1.2. Submissions

Telstra's submission supported the minor variations proposed by the ACCC.¹¹

4.1.3. ACCC decision

Following consideration of the submission received, the ACCC decided to vary the FADs for fixed line services as proposed in the consultation paper. The varied FADs for fixed line services is attached at Appendix E.

¹⁰ See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/non-nbn-fixed-line-services-access-regulation/fixed-line-services-fad-inquiry-2018/final-decision>.

¹¹ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022, p.3.

4.2. Interim Access Determination No. 1 of 2021 for Superfast Broadband Access Service

The Superfast Broadband Access Service (SBAS) is a declared wholesale access service that access seekers can use to supply non-NBN fixed line superfast broadband services to end-users.

In July 2021, the ACCC commenced a public inquiry to make a final access determination for SBAS following the declaration of the service.¹²

The Interim Access Determination No. 1 of 2021 (SBAS) dated 16 July 2021 maintains current regulated price and non-price terms while the ACCC finalises the public inquiry to make a final access determination for SBAS. The interim access determination (IAD) applies from 27 July 2021 to the day immediately before the day on which the final access determination for SBAS comes into force.¹³

4.2.1. ACCC consultation paper

The minor variations proposed to the SBAS IAD in the ACCC consultation paper include the insertion of definitions of 'Telstra Provider' and 'demerged Telstra Companies' and the replacement of a reference to Telstra Corporation Limited.

A minor further variation reflects that the SBAS IAD expires on the day immediately before the day on which a final SBAS access determination comes into force. This accords with the ACCC decision on 26 October 2022 to extend the SBAS IAD until that date.

4.2.2. Submissions

Telstra's submission supported the minor variations proposed by the ACCC.¹⁴

4.2.3. ACCC decision

Following consideration of the submission received, the ACCC decided to vary the SBAS IAD as proposed in the consultation paper. The varied SBAS IAD is attached at Appendix F.

5. Commencement

5.1. Commencement of the RKR's

Given the nature of the variations to the RKR's, the varied RKR's will come into effect on the day that Schedules 2 and 3 of the *Telstra Corporation and Other Legislation Amendment Act 2021* come into effect. This is due to occur on 1 January 2023.

5.2. Commencement of the varied access determinations

The ACCC acknowledges Telstra's intention to finalise its business restructure effective 1 January 2023. However, Telstra noted this date as being subject to change, pending court

¹² See <https://www.accc.gov.au/regulated-infrastructure/telecommunications-and-internet/non-nbn-fixed-line-services-access-regulation/superfast-broadband-access-service-sbas-final-access-determination-inquiry-2021>.

¹³ See <https://www.accc.gov.au/public-registers/telecommunications-registers/s152bcw-access-determinations-register/interim-access-determination-no-1-of-2021-for-the-superfast-broadband-access-service-sbas>.

¹⁴ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022, p.3.

approval of the restructure.¹⁵ We therefore sought stakeholder views on the appropriate commencement date for the changes to the FADs and the IAD.

5.2.1. ACCC consultation paper

Our consultation paper outlined that potential commencement dates included, but were not limited to, the following options:

- 1 January 2023, though we noted that the business restructure may not be in effect by this date
- on the day that Schedules 2 and 3 of the *Telstra Corporation and Other Legislation Amendment Act 2021* come into effect, though we noted that the business restructure may not be finalised on this date
- another date, in accordance with stakeholder submissions to the consultation paper.

5.2.2. Submissions

The submission from Telstra advised the ACCC that the NSW Supreme Court has approved Telstra's scheme to implement the corporate restructure on 1 January 2023. Telstra therefore recommended that the ACCC makes its proposed changes to come into effect on 1 January 2023.¹⁶

5.2.3. ACCC decision

In light of Telstra's confirmation of the NSW Supreme Court approval of the corporate restructure, the ACCC has decided that the minor variations to the FADs and IAD will come into effect on 1 January 2023.

¹⁵ Telstra Corporation Limited, Scheme Booklet for the proposed restructure of the Telstra Group, 23 August 2022.

¹⁶ Telstra Corporation Limited, Submission to the ACCC, Telstra Corporate Restructure: Minor variations to certain Record Keeping Rules, the Fixed Access Determinations for Fixed Line Services, and the Interim Access Determination for Superfast Broadband Access Services, 14 December 2022, p. 8.