

# **nbn** submission to the ACCC – NBN Services In Operation Record Keeping Rules – Consultation Paper

14 August 2020



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## Environment

**nbn** asks that you consider the environment before printing this document.

# 1 Introduction

- 1 **nbn** is pleased to respond to the ACCC's Consultation Paper in regard to the NBN Services in Operation Record Keeping Rules (the RKR) and the related Disclosure Direction.
- 2 **nbn** agrees with the ACCC that there is no need to make any changes to the scope of the RKR. There does not appear to be any evidence that the current RKR is targeting the wrong information, is incomplete or not working appropriately.
- 3 In its media release of 27 March 2020 '*ACCC response to COVID-19 pandemic*', the ACCC specifically acknowledged the need to reduce regulatory burden during the current COVID-19 pandemic. The ACCC noted "In the interests of reducing regulatory burden, public inquiries that consider new regulation will generally be deferred."<sup>1</sup> In line with this statement, **nbn** welcomes the ACCC's position in the Consultation Paper to not change the current scope of the RKR.
- 4 **nbn** has already devoted considerable resources in establishing a framework and processes to report in accordance with the current RKR. Any changes to the scope of the RKR may impose additional up-front and ongoing costs on **nbn** and may require lead time to implement. **nbn** is strongly of the view that the ACCC should carefully consider any proposed variations in terms of their cost and benefit.
- 5 The ACCC's Consultation Paper notes that the information collected under the RKR provides information on demand for **nbn**'s wholesale services and allows the ACCC to monitor and understand how competition is developing over the **nbn**. **nbn** submits that the ACCC should take account of a wide range of factors influencing downstream competition. Information gathered under the RKR is only one source of information which is relevant to the ACCC's assessment of downstream competition.
- 6 The ACCC notes that the publication of the NBN Wholesale Market Indicators Report required by the Disclosure Direction is useful to a wide range of stakeholders and provides important transparency for telecommunications market participants. However, **nbn** notes that the information presented via the NBN Wholesale Market Indicators Report does not provide a complete picture of how the market is developing over the **nbn**. For instance, RSPs decide how they will shape and sell speed tiers over the **nbn**, and this is independent of the wholesale speed tiers provided by **nbn**. By way of example, Aussie Broadband has recently launched a new 75/20Mbps speed tier, and Belong offers 30Mbps, 40Mbps and 80Mbps downlink services, and these speed tiers are currently not offered by **nbn**.<sup>2</sup>

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<sup>1</sup> ACCC, Media Release, *ACCC response to COVID-19 pandemic*, <https://www.accc.gov.au/media-release/accc-response-to-covid-19-pandemic>.

<sup>2</sup> Aussie Broadband, <https://www.aussiebroadband.com.au/nbn-plans/>. Belong, <https://www.belong.com.au/broadband/nbn>.

Therefore, the ACCC needs to consider whether it is appropriate that the collection of this information should be from **nbn** or the RSPs.

7 Our comments are set out below and relate to the following questions raised in the Consultation Paper:

- a) Continued operation of the RKR
- b) Duration of the RKR
- c) Other matters to consider in improving or revising the current RKR or Disclosure Direction.

## 2 Continued operation of the RKR

8 **nbn** submits that if the RKR is extended beyond September 2020, it should be extended without further amendments.

9 **nbn** submits that all superfast broadband access providers, not just services provided by **nbn**, should be subject to this RKR, if extended, and disclosure directions. Information about the rate and take up of superfast broadband access services would provide for a more complete understanding of the development of superfast broadband (at a wholesale level) and downstream competition across the superfast broadband market as a whole.

## 3 Duration of the RKR

10 The Consultation Paper notes that the ACCC's preference is to extend the RKR for a period of five years. **nbn** is of the view that any extension of the RKR should only be for a limited period and not exceeding three years.

11 **nbn** submits that it is good practice to include a sunset date to prompt a subsequent review of the ongoing need for and design of the RKR. It is also important to note that the residual build of the **nbn** network is still being completed, and the market environment in which **nbn** supplies services continues to evolve. In three years' time, all migrations to the **nbn** network will have been completed, Module 2 of **nbn**'s Special Access Undertaking should be in operation, and this would be an appropriate time to consider the ongoing need for and design of the RKR.

## 4 Other matters to consider in improving or revising the RKR or Disclosure Direction

### **General comments**

12 If the ACCC reissues (and potentially varies) the Disclosure Direction, its decision needs to be clearly (and specifically) justified with reference to the relevant statutory provisions.

### **Timing for lodgment of reports under the RKR and Disclosure Direction**

13 The current RKR and Disclosure Direction requires **nbn** to submit the required reports to the ACCC within 28 calendar days of the relevant Reporting Date (31 March, 30 June, 30 September and 31 December).

14 During months with public holidays there are reduced business days and lower levels of staff availability to generate the required reports. For example, during the months of January and April this year, there were only 18 and 17 Business Days respectively to produce the December Quarter 2019 and March Quarter 2020 reports under the RKR and the Disclosure Direction.

15 **nbn** seeks to extend this lodgment date to be within *30 calendar days* of the relevant Reporting Date (i.e. allow two additional calendar days for submission), to allow some flexibility for months with public holidays.

16 **nbn** notes that 30 calendar days for lodgment would be consistent with **nbn**'s quarterly lodgment of access agreements under section 152BEA of the *Competition and Consumer Act 2010*, which requires the reports to be submitted with the ACCC within 30 days after the end of each quarter.

### **Format for lodgment**

17 The current RKR requires **nbn** to provide the required reports via email. As the ACCC is aware, the file size for the RKR report relating to CVC information is quite large, given the daily utilisation information required to be reported for each CVC. **nbn** requests an amendment to Rule 21 of the RKR to allow **nbn** to use alternative electronic modes of delivery, as appropriate, and as agreed with the ACCC.

### **There are no more services at the 'non-Listed Points of Interconnect'**

18 There are no more services at the 'non-Listed' Points of Interconnect (POI). **nbn** therefore submits that the existing Disclosure Direction be updated to remove the reporting of services for 'non-Listed POIs' under Table 3 and Table 7.

### ***Rule 23 of the current RKR***

- 19        **nbn** understands that Rule 23 of the current RKR allows the ACCC to request reports from **nbn** as and when required. It gives the ACCC the power to vary the basis on which **nbn** is required to prepare reports under the RKR.
- 20        If the ACCC were to exercise Rule 23 of the RKR, this would effectively bypass consultation about the preparation of different reports from those currently required. This would prevent **nbn** and industry from having the opportunity to comment on any different basis on which the reports are to be prepared by **nbn** for the ACCC, to ensure that they are fair, necessary and not technically and economically burdensome.
- 21        If the ACCC considers at some point in the future that the RKR is targeting the wrong information or is incomplete in some way, it would be more appropriate for the ACCC to vary the RKR at that time (including through consultation with **nbn** and other interested parties) and to provide a clear justification for doing so with reference to the relevant statutory criteria.

### ***Implementation***

- 22        If there are any changes to the current RKR, we request that the ACCC engage further with **nbn** in regard to:
- a)        an appropriate timeframe for implementation, noting that **nbn** will likely need to make changes to its systems and current processes to meet varied recording and/or reporting requirements; and
  - b)        the proposed drafting of any variations to the RKR.