

21 August 2015

Mr Sean Riordan  
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Dear Sean

**Proposed nbn Wholesale Market Indicators Report – discussion paper**

nbn co limited (**nbn**) welcomes the opportunity to comment on the ACCC's discussion paper on the proposed **nbn** Wholesale Market Indicators Report (**the Discussion Paper**).

**nbn** understands that, as set out in the ACCC's Explanatory Statement to the NBN Services in Operation Record Keeping Rules (RKR), September 2014 (the **Explanatory Statement**), the ACCC developed the RKR to enable it to obtain information that is relevant to the operation of Part XIB and Part XIC. For example, the information provided under the RKR enables the ACCC to monitor the development of competition in relevant markets and the use of, and investment in, the **nbn**<sup>TM</sup> network.

The proposal set out in the Discussion Paper to publically disclose highly disaggregated information provided under the RKR is, however, a surprise to **nbn** and raises a number of significant concerns.

First, the proposed disclosure is inconsistent with the ACCC's statements at the time it made the RKR just under a year ago:

"...the ACCC will likely publish highly aggregated 'snapshots' about the development of competition over the NBN. However these reports would be sufficiently aggregated so as not to identify individual access seeker, which is in line with reports currently published under the CAN RKR."<sup>1</sup>

The level of detail proposed to now be disclosed via the Wholesale Market Indicator Report is significantly greater than that currently published in the 'Snapshot of Telstra's CAN' or the ACCC's Competitive Safeguards Report. In particular, the ACCC proposes to disclose SIO information by individual access seeker (and to identify access seekers) broken down by technology and speed tier, which is not only inconsistent with the ACCC's previous statements (which are not acknowledged or addressed in the Discussion Paper), but is unprecedented in this industry.

Secondly, with the exception of the proposed 'NBN Points of Interconnect' table, it is not clear to **nbn** how the information proposed in each table relates to the legislative criteria for disclosure, as set out in section 151BUA(2) of the CCA. Although the Discussion Paper provides some high-level discussion around these criteria, the relationship between each set of information and the promotion of competition and/or the facilitation of Parts XIB and XIC is not clear. For example, the Discussion Paper states that enhanced information about the market for **nbn** services would be pro-competitive by lowering barriers to entry for

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<sup>1</sup> ACCC, *NBN Services in Operation Record Keeping Rules - Explanatory statement*, September 2014, p. 6.



potential market entrants (for example, by providing visibility over demand for different types of wholesale **nbn** services). However, it is unclear to **nbn** how information about existing SIOs on the **nbn**<sup>TM</sup> network will enable potential entrants to make more informed decisions about whether (and in what capacity) to enter the market. The number of SIOs for different **nbn** services does not necessarily provide any indication of the existence (and scope) of potential unmet demand in the market and/or end user willingness to pay. While the Discussion Paper makes various broad, general statements about the benefits of the proposed disclosures, the Discussion Paper contains no substantive analysis of the link between the particular disclosures contemplated and the objectives identified.

To some degree, the issue of how the proposed disclosure relates to the relevant legislative criteria is a temporal one. At this stage, much of the proposed disclosure could be considered premature and is seeking to anticipate issues, the nature of which have not yet become apparent (for example in relation to CVC utilisation).

Thirdly, **nbn** believes that the disclosure of such detailed information about individual access seekers could, in fact, adversely impact the development of competition in the market for **nbn**-based services and **nbn** is concerned that the ACCC has not adequately assessed the implications of such disclosure. For example, in the context of a developing market, disclosure of detailed SIO information could have quite different consequences for some market participants from those suggested by the ACCC at pages 8-9 of the Discussion Paper, and could in fact negatively impact their ability to seek and secure market share. This section of the Discussion Paper does not specifically address how *disclosure* of detailed information about individual access seekers would support the achievement of the identified objectives.

Given the nature of the information proposed for disclosure and the potential implications for access seekers, **nbn** assumes that the ACCC will be directly engaging with **nbn** access seekers on the proposed disclosure prior to finalising any disclosure arrangements. It is not sufficient to assume that all such access seekers will have the resources to make submissions in response to a consultation process such as this Discussion Paper. In particular, where the ACCC proposes to disclose confidential information directly attributable to a particular **nbn** access seeker, the ACCC should (to the extent that it has not already done so) provide specific written notification to the access seeker, providing an opportunity for them to express any views before the ACCC makes a decision on the proposed disclosure.

Fourthly, **nbn** notes that caution should be exercised in drawing any kinds of conclusions from the information proposed for disclosure at this time. Although rollout and takeup of the **nbn**<sup>TM</sup> network is well underway, only around 10% of premises nationwide are serviceable, migration is ongoing, and there remain a number of temporary/transitional factors that are affecting how access seekers use the network (e.g. the temporary POIs and the CVC transitional credit in respect of CSAs with fewer than 30,000 serviceable premises). As a result, the summary statistics on SIOs, market shares and CVC utilisation may not be representative of the pattern of take-up and usage once the rollout and migration is complete.

We would like the opportunity to discuss the matters raised in this letter as soon as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caroline Lovell', is positioned above the typed name.

Caroline Lovell  
Chief Regulatory Officer