



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

NBN Services in Operation Record Keeping and Reporting Rules extension

Explanatory Statement

September 2020

Australian Competition and Consumer Commission

23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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1. Background

The NBN Services in Operation Record Keeping and Reporting Rules (NBN SIO RKR) require NBN Co to provide information to the ACCC on the number of Access Virtual Circuit (AVC) services in operation, the amount of Connectivity Virtual Circuit (CVC) capacity being acquired and CVC utilisation over the NBN.

1.1. Authority to make record keeping rules

Under section 151BU of the *Competition and Consumer Act 2010* (CCA), the ACCC can make record keeping rules (RKR) that require one or more specified carriers to keep and retain records and give reports to the ACCC consisting of information contained in those records.

The ACCC cannot require a carrier to keep and retain records unless they will contain information relevant to specified matters, including relevantly:

- determining compliance with the Competition Rule (section 151AK of the CCA)
- the operation of Part XIB of the CCA (other than Division 6)
- the operation of Part XIC of the CCA, or
- the operation of the National Broadband Network Companies Act 2011 or regulations under that Act

Sections 151BUA, 151BUB and 151BUC of the CCA give the ACCC the power to disclose, or to require carriers or carriage service providers to disclose, reports prepared in accordance with an RKR.

1.2. The NBN SIO RKR

The NBN SIO RKR was first issued in September 2014 in order to obtain information that is relevant to the operation of Part XIB and Part XIC of the CCA. Under Part XIB, the ACCC is responsible for enforcing the telecommunications specific anticompetitive conduct provisions as well as providing the Minister with annual reports including a report on competitive safeguards within the telecommunications industry.

The objective of Part XIC of the CCA is to promote the long-term interests of end-users (LTIE), which comprises the objectives of:

- promoting competition
- achieving any-to-any connectivity in relation to carriage services that involve communication between end-users, and
- encouraging the economically efficient use of, and investment in, infrastructure supplying telecommunications services.

The ACCC has a number of statutory functions under Part XIC of the CCA including declaration of listed carriage services, conducting inquiries for access determinations (containing price and non-price terms of access) for declared services and the assessment and enforcement of special access undertakings and anticipatory exemption applications.

The ACCC also has ancillary enforcement functions under Part XIC including ensuring access providers (including NBN Co) comply with the standard access obligations set out in sections 152AR and 152AXB of the CCA.

The ACCC's performance of these statutory functions, and the operation of Part XIB and Part XIC of the CCA more generally, is predicated on the ACCC receiving timely and reliable information concerning the state of competition in telecommunications markets, information regarding how competitive dynamics are changing over time and information on the efficient use of, and investment in, telecommunications infrastructure.

In this regard, the NBN SIO RKR provides for the reporting of highly relevant information on demand for NBN Co services – in terms of services in operation, referred to as access virtual circuits (AVC) and network capacity, referred to as connectivity virtual circuits (CVC). It also provides information on the geographical distribution of NBN services.

Such information is essential for the ACCC to assist monitoring how competition develops over the NBN and whether the use of and investment in telecommunications networks occurs in an efficient manner. Competition and efficient investment are important for economic efficiency, which in turn leads to outcomes that will be in the LTIE. Where wholesale access seekers are able to acquire identical products, an understanding of the variety of provisioning methods of these products is essential to understand economic efficiency, particularly dynamic and allocative efficiency.

2. NBN SIO RKR extension consultation - 2020

In July 2020, the ACCC sought comment from stakeholders regarding a proposal to extend the operation of the NBN SIO RKR. While the extension of the NBN SIO RKR was the focus of the July 2020 consultation, the ACCC sought views on any other matters that stakeholders considered relevant to the operation of the NBN SIO RKR. The ACCC proposes to consider the substantive matters raised by stakeholders in a separate process to allow the RKR to be extended before 30 September 2020.

Submissions were received from five stakeholders; Aussie Broadband, NBN Co, Optus, Telstra and the Australian Communications Consumer Action Network (ACCAN).

The submissions to the NBN SIO RKR extension consultation have been added to the [ACCC website](#).

Timeframe for extending the NBN SIO RKR

Stakeholders agreed that the NBN SIO RKR should be extended, with Aussie Broadband, Telstra and ACCAN supporting the ACCC's preferred period of five years. Optus suggested the NBN SIO RKR should be extended indefinitely and NBN Co preferred a three year extension.

The ACCC has decided to amend the expiry date in clause 2 of the NBN SIO RKR to 30 September 2025 in order to adequately cover the period when the NBN roll out is expected to be completed and beyond. The ACCC will consider any market changes that might require reconsideration of the content of the NBN SIO RKR in the intervening period.

Submissions on other matters

Enterprise Ethernet reporting

Optus submitted that the NBN SIO RKR should be extended to include NBN business products, such as Enterprise Ethernet. Optus submitted that NBN Co.'s business products

are increasingly contributing a material component to NBN Co.'s revenue; and the use of NBN products in the enterprise market is growing and may become the dominant wholesale network in the enterprise market.

Optus suggested that the NBN SIO RKR should be amended to include reporting on the market share of NBN Enterprise Ethernet Services by RSPs. It suggested that to allow for proper transparency and comparison, the information should include the Enterprise Ethernet Class of Service and the Enterprise Ethernet Access Speed.

The ACCC will consider whether to include a requirement that Enterprise Ethernet services be included in the RKR in a separate process.

Expansion of reporting requirements

Telstra submitted that the NBN SIO RKR should be expanded to cover more areas, including:

1. Wholesale pricing arrangements, such as separate bundling and overage reporting
2. Reporting of performance against service standards, and
3. Improved transparency of NBN Co.'s costs and revenues.

The ACCC considers that whether additional overage and bundling reporting will assist in supporting the ACCC's statutory functions is an open question and will be considered in a separate consultation process.

Timing for lodgement of reports

NBN Co submitted that due to the impact of public holidays, the lodgement period for NBN SIO RKR reports set out in clause 20(a) should be extended by two days to 30 calendar days.

The ACCC considers that this is appropriate and has extended the time period for lodgement of both the NBN SIO RKR and the NBN SIO RKR Disclosure Direction to 30 calendar days.

Format for lodgement

NBN Co submitted that due to the large size of the CVC reports, it was not practical to provide the reports via the prescribed email mode. NBN Co requested that clause 21 of the RKR be varied to allow NBN Co to use alternative electronic modes of delivery.

The ACCC considers that this change in format can be actioned by the ACCC approving another mode of delivery under clause 21 of the RKR.

Minor technical amendments

The ACCC also made two minor technical amendments to the NBN SIO RKR. Firstly, the NBN SIO RKR now requires the inclusion of the CVC identifier number for each CVC under clause 9(m). The reporting of each CVC ID was requested by the ACCC in mid-2019 to assist tracking capacity and utilisation data for individual CVCs across a range of quarterly reports. Secondly, the ACCC has updated the Definition section to include FTTC technology type, which NBN Co began reporting in September 2018.

3. Amendment to NBN SIO RKR

The ACCC has amended the NBN SIO RKR in order to:

1. Extend the NBN SIO RKR expiry date to 30 September 2025 in clause 2.
2. Add the definitions of FTTC and CVC ID to the definitions section in clauses 4(f) and 4(h) respectively.
3. Add the requirement to report the CVC ID under clause 9(m).
4. Extend the reporting date from 28 days to 30 days in clause 20(a).

These changes will apply to the reports provided by NBN Co for the September 2020 quarter onwards.

The amended NBN SIO RKR and related Disclosure Direction are available on the [ACCC website](#).