



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

NBN Services in Operation Record Keeping and Reporting Rules – Disclosure Direction

Explanatory Statement

October 2021

Australian Competition and Consumer Commission

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1. Background

The ACCC has varied a direction to NBN Co to enable publication of reports that include NBN Co's Sky Muster Plus satellite services. The NBN SIO RKR Disclosure Direction

Under the NBN Services in Operation Record Keeping and Reporting Rules (NBN SIO RKR) Disclosure Direction, NBN Co is required to prepare and provide to the ACCC for publication a tabular report setting out a summary of selected information reported by NBN Co under the NBN SIO RKR. The Disclosure Direction expires once the NBN SIO RKR ceases to be in effect. The NBN SIO RKR was recently extended until 2025.

The report that NBN Co prepares (known as the 'NBN Wholesale Market Indicators Report') is comprised of eight tables setting out the number of NBN Access Virtual Circuits (AVCs) for each network technology, geographic region, speed tier, traffic class, Point of Interconnection (POI) and in some cases by NBN access seeker or NBN access seeker group. The report also includes information on the aggregate contracted capacity across all NBN Connectivity Virtual Circuits (CVC), CVC per POI and the number of CVC NBN access seekers at each POI.

The report is published quarterly, and a summary of the key statistics is set out on the [NBN Wholesale Market Indicators Report webpage](#).

1.1. Authority to issue a disclosure direction

The ACCC may issue a direction to a carrier or carriage service provider under section 151BUC of the *Competition and Consumer Act 2010* (CCA) requiring that carrier or carriage service provider to provide periodic reports or extracts from reports prepared in accordance with the record-keeping rules.

1.2. NBN Sky Muster Plus satellite services

The existing Sky Muster product was introduced in 2016 and is supplied as a typical Layer 2¹ NBN Ethernet Broadband Service (NEBS) with both an AVC and CVC product component (like all the other NBN services). In 2019 NBN Co introduced a new wholesale product called Sky Muster Plus that is a Layer 3 service operating on the NBN Satellite network.

In contrast to the existing Sky Muster product, the Sky Muster Plus product is unique because it is supplied as a single wholesale product, where the access seeker purchases a 'Plan' specifying the monthly metered data allowance for each service it acquires, rather than purchasing AVC and CVC separately.

The difference in the wholesale structure of the Sky Muster Plus product meant that Sky Muster Plus services acquired by access seekers were not captured under the NBN SIO RKR, which only required wholesale AVCs and CVCs to be reported.

On 1 July 2021 the ACCC notified NBN Co under rule 13 of the NBN SIO RKR that it must begin recording and reporting Sky Muster Plus services in operation (SIOs) under the NBN SIO RKR from September 2021 onwards.

¹ Open Systems Interconnection model (OSI model) - International Organization for Standardization

2. Amendment to NBN SIO RKR Disclosure Direction

The ACCC has amended the Disclosure Direction to include Sky Muster Plus SIOs from the September 2021 quarter onwards.

2.1. Requirements when issuing a disclosure direction

In order to issue a disclosure direction, the ACCC must be satisfied that the disclosure of each report in a series, or particular extracts from each report would be likely to:

- promote competition in markets for listed carriage services, or
- facilitate the operation of certain statutory provisions, including Part XIB and Part XIC of the CCA.²

In deciding whether to issue a disclosure direction, the ACCC must have regard to the legitimate commercial interests of the carrier or carriage service provider that will provide the report and such other matters as the Commission considers relevant.³

Before issuing a disclosure direction, the ACCC must invite the carrier or carriage service provider concerned to make a submission on a draft of the disclosure direction, and consider any submission made by it within the time limit.⁴

The ACCC is of the view that disclosure of the Sky Muster Plus SIO information in the NBN Wholesale Market Indicators Report would be likely to:

- promote competition in markets for listed carriage services
- promote competition in upstream and downstream markets related to the NBN
- facilitate the operation of Part XIB and Part XIC of the CCA as those Parts apply to NBN access services, and

The ACCC has had regard to the legitimate commercial interests of NBN Co and considers that this amendment to the Disclosure Direction would not harm NBN Co's legitimate commercial interests.

2.2. Promotion of competition

The ACCC considers that varying the existing NBN Wholesale Market Indicators Report to include Sky Muster Plus SIO information improves the availability of reliable market information and allows a wide range of telecommunications market participants (including upstream and downstream providers) to make better and more informed decisions.

If Sky Muster Plus SIOs were not added to the NBN SIO RKR and NBN Wholesale Market Indicators Report, then the information available to stakeholders regarding the NBN market would be incomplete, which may impact on any decisions regarding market entry and market participation.

2.3. Facilitate the operation of Parts XIB and XIC of the CCA

The ACCC is satisfied that varying the existing NBN Wholesale Market Indicators Report to include Sky Muster Plus SIO information is likely to facilitate the operation of Parts XIB and XIC of the CCA.

² CCA s.151BUC(2)

³ *ibid* s.151BUC(5)

⁴ *ibid* s.151BUC(6)

The ACCC considers that the updated report will facilitate the operation of Part XIB of the CCA by making available more detailed market information relating to the NBN for stakeholders to assess market behaviours and potential anti-competitive conduct.

The ACCC considers that varying the report to include Sky Muster Plus provides stakeholders with access to the information regarding the full suite of NBN residential wholesale products. This will improve transparency and facilitate commercial negotiations between NBN Co and NBN access seekers, which is the principal means envisaged by Part XIC to establish the terms of supply of NBN access services.

Publication of the varied report also facilitates the operation of Part XIC by making important market information available to interested parties that the ACCC would likely rely upon in making and explaining any actions and inform the ACCC's decisions under this Part.

2.4. Legitimate commercial interests

In deciding to vary the Disclosure Direction to NBN Co the ACCC had regard to the legitimate commercial interests of NBN Co and has formed the view that doing so would not harm those interests.⁵

This is because the ACCC already requires NBN Co to report its other wholesale residential grade NBN products and the additional reporting burden would be low. The ACCC also considers that NBN Co's commercial interest would not be harmed from the publication of accurate and complete data, which enables market participants and potential market participants to make informed commercial decisions.

NBN Co did not raise any concerns regarding its commercial interests during the consultation process undertaken in relation to this variation.

2.5. Changes to the Disclosure Direction

The ACCC provided NBN Co with a draft of the proposed Disclosure Direction on 18 August 2021 in accordance with 151BUC(6) of the CCA. NBN Co advised the ACCC of two drafting suggestions that the ACCC has decided to incorporate in the final Disclosure Direction.

According, the ACCC has decided to make the following amendments to the NBN SIO RKR Disclosure Direction to:

1. Require NBN Co to report Sky Muster Plus SIOs in Table 1.
2. Require NBN Co to report Wireless Plus SIOs and Sky Muster Plus SIOs on separate table rows.
3. Require NBN Co to report Sky Muster Plus access seekers in Table 3.
4. Require NBN Co to add Sky Muster Plus SIOs to the Satellite totals in Table 4.
5. Require NBN Co to report Sky Muster Plus SIOs in Table 5.
6. Require NBN Co to add Sky Muster Plus SIOs to the Satellite totals in Table 7.

These changes will be reflected in the NBN Wholesale Market Indicators Report from the September 2021 quarter onwards.

⁵ Ibid s.151BUC(5)