Submission on the ACCC Internet Activity RKR

This submission is made in response to he Australian Competition and Consumer Commission (ACCC) *Internet Activity – Proposed Record Keeping Rules Consultation Paper* of 9 August 2018. The submission is made by Havyatt Associates in its own right and not on behalf of any client.

Purpose of the Internet Activity Statistics

The ABS Internet Activity Series has been utilised to provide Australian data for the OECD Broadband Statistics. Having been gathered since 2002 the OECD defines 'broadband' using the then prevalent DSL benchmark as anything above 256 kilobits per second.

The Australian Government has on previous occasions recommended that the OECD adopt a new definition of either 10 Mbps, and now that 25 Mbps is enshrined in legislation as superfast that might be an appropriate criterion.

In the domestic setting, apart from providing data for international comparisons, the Internet Activity Series has been particularly useful as a way to demonstrate that the 'heavy lifting' of internet activity is still done through fixed line connections. Often the access device might be a mobile handset or a tablet, but if that is connected using WiFi the data is actually being provisioned using fixed line infrastructure.

The chart below shows the numbers of subscribers and the download per service across fixed, wireless and mobile handset connections.
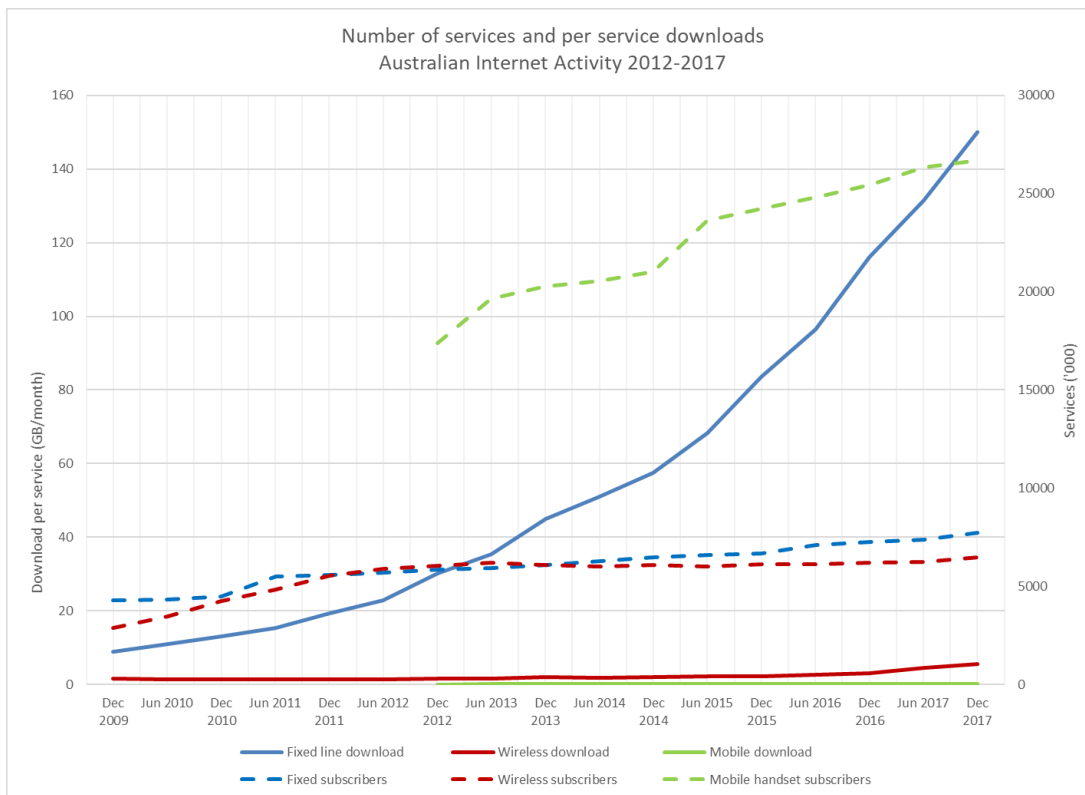
When the National Broadband Network was commenced there was a contention that it was an unnecessary investment as the high speed capabilities of 4G networks would make the technology redundant. That has thus far proven not to be the case. Despite high take up rates of mobile devices (where there are one or two per person) and modest growth of

both fixed and wireless connections (which tend to be to a building), the workhorse for data downloading is fixed network connections.

This is not surprising given the technical characteristics of the services.

However, two trends will potential impact on hat trend. The first is the move o unlimited download data plans on mobile networks. The second will be the deployment of 5G technology.

The data set represented by the Internet Activity statistics is the only means of determining the extent to which this does (or does not) change.

Response to consultation questions

1) Are the definitions and concepts outlined within the proposed RKR (Attachment A) easy to understand, accurate and relevant? If not, what changes would you suggest?

   The proposed RKR applies to "a carrier or carriage service provider." This is a usage that has been common in the regulatory space for the twenty years since full competition was introduced and confuses the use of the relevant terms. A carrier is a person who owns infrastructure, a carriage service provider is a person who uses infrastructure to provide services to the public.

   One organisation can be both, when regulating an activity they should be referred to as a consequence of the activity subject of the regulation. In relation to the RKR the organisations reporting on NBN and non-NBN fixed services are being asked to do so in their capacity as carriage service providers. The Rules should not, therefore, refer to 'carriers or carriage service providers' but only as 'carriage service providers.'

   It appears from the construction of the mobile services information that the carriers are being asked to report on the total services being provided over their networks, and the same organisations as carriage service providers are being asked to report on their retail offerings. It is unclear why the wholesale/retail split has been determined as relevant, nor why under equivalent rationale NBN Co shouldn't have an obligation. There is a further complication that new network operators can continue to be resellers of another network while building their own. This situation may well apply to TPG and therefore be confusing.

   Our suggestion would be to consistently only place the RKR on carriage service providers for each of the technology scenarios.

2) The ACCC has proposed either a bi-annual (June and December) or annual (December) reporting frequency. What would be an appropriate reporting frequency for the RKR?

   The data set has historically been collected bi-annually. Continuing to do so provides greater value from the data set, and is likely to be less disruptive to internal processes than a move to annual reporting.

3) The ACCC will be aiming to collect information on SIO and volumes of data downloaded by NBN wholesale speed tiers. Will this level of disaggregation allow appropriate insight into the NBN market?

   It would be preferable if the data could be broken down by speed tiers and technology. There are characteristics other than speed (e.g. delay and jitter) that are different between the technologies and result in differential utility which could be expected to show up as differences in download volumes.

4) The ACCC has reduced the scope of the information that it proposes to collect (see Section 3.1 above). Are there any other RSPs that should be considered for inclusion?

We support the reduction in the number of reporting entities. The ABS claims to have collected data from over 1,000 ISPs yet its output only refers to ISPs with more than 1,000 services. This suggests that the ABS has been making data requests from a lot of providers who are no longer relevant.

However the ACCC has erred in restricting the number of providers to such a narrow set. There seems to be no good reason for not obtaining data from every carriage service provider for services that use NBN Co provided access circuits. The restriction of the other services to the providers that include their own infrastructure is appropriate. It is also better to not list subsidiaries or related parties as these can change regularly, and rather to simply specify that the listed ISP is required to include in its report services provided by subsidiaries or ell-defined related parties.

As discussed in response to question one, the mobile services RKR should be addressed to carriage service providers rather than to carriers. A consequence of this should be the inclusion of the major mobile resellers.

5) The ACCC is proposing to make the information collected via the RKR publicly available in aggregate form. Are there any comments you wish to make on this?

See comments above about the purpose of the Internet Activity statistics.

6) For data users, is the layout of the Output Template (Attachment C) easy to understand and fit for purpose? If no, what changes would you suggest?

See comments in question three. The data download information for the NBN should be broken down by speed tiers and technology of the access link.

For mobile services, providers can identify whether the service is a handset, tablet, dongle or 'hot spot.' It is suggested that the breakdown on these criteria is more useful and relevant than a wholesale/retail split by carriers.