



Australian
Competition &
Consumer
Commission

Proposed NBN Wholesale Market Indicators Report

Discussion Paper

July 2015



Australian Competition and Consumer Commission

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1 Introduction

The ACCC proposes to publish a NBN Wholesale Market Indicators report which would provide, on a quarterly basis, visibility over the development of the wholesale market for NBN access services.

Data to be included in the proposed report are collected pursuant to the NBN Services in Operation Record Keeping Rules (NBN SIO RKR) and, as a basis of comparison, the Telstra Customer Access Network Record Keeping and Reporting Rule (Telstra CAN RKR)¹.

This initiative was foreshadowed in the ACCC's report to the Australian government on a proposed carrier licence condition for NBN Co, in response to submissions received in that consultation.²

This report would improve the stock of NBN market information which would assist in promoting competition in the NBN market and facilitate the operation of Parts XIB and XIC of the *Competition and Consumer Act 2010* (CCA).

This paper outlines information intended to be included in the report, including sample reporting templates and seeks the views on interested stakeholders on the report's content and form.

¹ Relevant information from these RKRS are at Attachment A and B

² Report to Department of Communications: *ACCC consultation on proposed information disclosure carrier licence condition*, available at <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/information-disclosure-by-nbn-co/accc-report>

Timeline and consultation process

Submissions are due by Friday 21 August 2015. The ACCC may be limited in its ability to fully consider late submissions. It is therefore important that interested parties make their submissions by the above deadline.

Following the completion of this industry consultation process, and based on submissions provided, the ACCC will consult with NBN Co and Telstra pursuant to section 151 BUA of the *Competition and Consumer Act 2010* on proposed directions to disclose. The ACCC anticipates issuing directions to disclose to NBN Co and Telstra in the final quarter of 2015.

Making a submission

Please send submissions to the following email address:

Market.indicators@.acc.gov.au

You should make your submission in either Adobe PDF or Microsoft Word format that is text searchable. Hard copy submissions can be sent to the address below.

Enquiries

For enquiries regarding this discussion paper, please use the above email address or contact:

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Confidentiality claims

To facilitate an informed and open consultation, the ACCC will treat all submissions as public and publish them on the ACCC website.

If interested parties wish to submit commercial-in-confidence material, they should submit both a public and commercial-in-confidence version of their submission. In the confidential version, confidential material should be clearly identified and marked as

confidential. In the public version, confidential material should be redacted and replaced with an appropriate symbol or '[c-i-c]'.

It is the preference of the ACCC that as much material as possible is disclosed in the public submission.

Background

Direction to Disclose

Under Section 151BUA of the CCA the ACCC may disclose reports given to it by carriers, or carriage service providers if it is satisfied that the disclosure of the report, or the disclosure of particular extracts from the report, would be likely to:

- promote competition in the market for listed carriage services or
- facilitate the operation of Part XIB (other than Division 6) or Part XIC.

In contemplating whether to disclose information the ACCC must have regard to:

- the legitimate commercial interests of the carrier or carriage service provider concerned and
- such other matters as the Commission considers relevant.

Issues for discussion

Information to be disclosed

Services in operation data

The report is intended to provide an overview of the wholesale market for NBN access services by providing a count of the number of NBN access services in operation (SIO)³, and a count of active NBN points of interconnect (POI) by number of access seekers acquiring access services at the POI, as at the end of each quarter.

SIO counts would be made on a variety of bases to provide different views of the NBN wholesale access market:

- By technology; fibre-to-the premise (FTTP), wireless, satellite and, recently, fibre-to-the-node/basement (FTTN&B) and, in the future hybrid fibre coaxial (HFC)
- By geographic region; data would be published at the national level; nationally by region (metropolitan/regional) and at the state/territory level

³ Attachment C outlines proposed reporting templates.

- By traffic class; for national data each traffic class through which NBN services are delivered, and/or
- By speed tier; 12/1, 25/5, 25/10, 50/20 and 100/40 Mbps for FTTP, 12/1, 25/5, 25/5-10, 25-50/5-20 and 25-100/5-40 Mbps for FTTB, 12/1 and 25/5 Mbps for wireless and 6/1 Mbps for the interim satellite service⁴.

These data would also provide an indication of end-user demand for NBN services by technology, geographic region, traffic class and speed tier.

The ACCC is also considering reporting a count of services in operation (traffic class 4 access services) by NBN access seeker. Traffic class 4 access services are used for best efforts internet connectivity services that are typically acquired for supplying the mass market.⁵

These data would be provided on a national basis by technology, as well by speed tier of NBN access service; and on a geographic basis, such as on a national metro/regional basis, and/or by state/territory. The proposed report would group states/territories as New South Wales/Australian Capital Territory, Victoria/Tasmania, Queensland, South Australia/Northern Territory and West Australia. This is consistent with NBN Co's reporting to the ACCC while it is operating interim points of interconnection, some of which can be used to supply services in adjacent states or territories.

The inclusion of data specific to NBN access seekers would provide an indicator of whether there could be impediments to the development of an effectively competitive market, which could be the case where the market for NBN wholesale access services was heavily concentrated.

Providing a view of these data on a national metropolitan and regional basis would allow a more direct comparison to be made with the market for Telstra CAN access services, where markedly different market concentration is observed in metropolitan (ULLS bands 1 and 2) and regional (ULLS bands 3 and 4) areas.

Also, providing a view of these data by access technology and speed tier would provide visibility over whether different market outcomes are emerging for different access technologies, and for more basic or higher speed services. This would be a useful indicator of whether there could be technology specific and/or commercial factors that are impeding the development of competition in some market segments relative to others.

It would be important in interpreting these data to remember that they could not be relied upon to give a view of retail market shares. This is because an NBN access seeker may

- use a NBN access service to provide a service directly to an end user or may wholesale a service to a retail service provider (RSP) who then delivers a service to an end user, or

⁴ NBN Co has scheduled its FTTP initial product release, including product speed tiers, for September 2015.

⁵ In addition, access seekers providing services over other NBN traffic classes must first purchase a TC-4 service.

- choose to acquire resale services from another NBN access seeker in some circumstances.

The ACCC would propose including information on those NBN access seekers with a count of services in operation above a designated threshold, proposed to be 5% of the total number of services in operation for the relevant NBN market. The remaining services would be aggregated and designated in reports by the category 'other'.

This is intended to address the practical difficulties of publishing information on a potentially broad range of NBN access seekers, while still providing visibility over the bulk of the market.

The proposed report would build on and complement reports that NBN Co makes available, for example, NBN Co publishes a weekly progress report which provides a count of the status of premises within a serving area with regard to their service class.

Capacity data

The report would also provide an overview of NBN capacity through publishing connectivity virtual circuit (CVC) (essentially the size of the pipe) data comprising:

- Total capacity by state/territory and by traffic class and
- Average utilisation of CVC in Mbps for contracted CVC capacity for each traffic class in peak periods.

It would be important in interpreting these data to note that NBN Co currently provides a credit for the first 150 Mbps of CVC acquired in connectivity serving areas where NBN Co has passed fewer than 30 000 premises. Consequently, NBN access seekers may currently be purchasing additional CVC to take advantage of these credits.

These data would provide an indication on the development of network capacity on the NBN to meet end-user demand.

Point of interconnect (POI) data

A POI is the inter-network location where end-user traffic is handed over from the NBN onto an access seekers' own network or onto a transmission provider's network for transport to the retail service provider's point of presence.

POIs define the geographic boundaries of NBN Co's network. There are 121 POIs that are operational within the NBN Co network, with NBN Co also using 5 interim POIs located in Sydney, Melbourne, Brisbane, Adelaide and Perth.

Under the interim satellite wholesale broadband agreement there is a single POI located in Sydney. The state listed in the proposed reporting templates would be New South Wales but the services in operation connected to that POI could be in any state/territory.

The proposed report would include information on the number of POIs (including interim POIs) that are active – in the sense that these POIs are being used for the purpose of supplying services, and a count of the number of active POIs by active NBN access seeker presence. For example, there are x POIs with 2 active NBN access seekers present, z POIs with 3 active NBN seekers present, etc.

These data would provide an indication of the distribution of NBN access seeker presence at NBN POIs, which would assist in identifying the extent to which there may be technical or commercial impediments to NBN access seekers acquiring NBN access services at some POIs.

It would be important in interpreting these data to note that it is not yet necessary at this stage of the NBN rollout for an NBN access seeker to interconnect at all permanent POIs, since there are a number of NBN Connectivity Serving Areas that do not yet contain a NBN Service Area Module that has reached ‘ready for service’ status. That said, Telstra reports identify 62 NBN Connectivity Serving Areas that already contain a NBN Service Area Module that has reached ‘ready for service’ status.⁶

Telstra Customer Access Network (CAN) data

The proposed report would publish a count of services in operation:

- By access seeker; access seeker groups with over 5% of total Telstra CAN access lines, with remaining services designated as ‘other’.
- By geographic region; SIO data published at the national level with a metropolitan/regional (ULLS band) breakdown.

This would complement the existing reporting on the Telstra CAN by breaking out the total services in operation count already provided for ULLS and LSS services into sub-counts by access seeker; group.

This would enable comparison with services in operation data by access seeker for the NBN wholesale access market (again, with the caveat that the information concerns the wholesale access market and hence cannot be relied upon to provide a direct measure of retail market shares), and provide an indication of how the market structure for NBN access services compares to the structures that were observed for Telstra CAN access services.

Preparation and publication of reports

The ACCC proposes to publish these reports on the ACCC website. The report would be published each quarter, consistent with NBN Co’s and Telstra’s reporting obligations under the NBN SIO RKR and the Telstra CAN RKR respectively.

⁶ See NBN Rollout Schedule published at <http://telstrawholesale.com.au/nbn/nbn-rollout/index.htm>
This report is limited to NBN Service Area Modules that are within both the footprint of Telstra’s fixed line access networks and the proposed footprint of NBN Co’s fixed line network, so may not list all relevant Connectivity Serving Areas.

Quarterly publication would provide timely disclosure of market information during a period of transition to the new industry structure.

Objectives of the proposed direction to disclose

Promotion of competition

The ACCC assesses competition benefits by comparing the opportunities and environment for competition with and without the Market Indicators Report.

In this regard, enhancing information flows concerning the wholesale market for NBN services would be pro-competitive where it reduces information asymmetries, including as and between RSPs, and thereby lower barriers to entry, and promote more informed decision-making on the part of market participants.

For example, where a Market Indicators Report was implemented, a firm that was considering entry as an NBN access seeker, an RSP or an over-the-top provider, would have a similar view of the overall wholesale market that would otherwise only be available to NBN Co as the market operator or a large incumbent supplier over the NBN. This would enable the firm considering entry (as well as other firms that have already entered) to access a common base level of market data, and thereby make more informed decisions about:

- market entry and infrastructure deployment
- choice of NBN access seeker with whom to enter into a wholesale supply agreement
- demand for different types of wholesale NBN services, and likely downstream demand for retail services.

The lowering of barriers to entry and promoting competition amongst NBN access seekers and other RSPs supplying over the NBN would in turn benefit consumers through the availability of a greater range of products and services to meet their needs.

Facilitate the operation of Part XIB and Part XIC of the CCA

The operation of Parts XIB and XIC would be enhanced by a Market Indicators Report where it results in better data availability for NBN access seekers to assist in negotiating access to the NBN, and to the ACCC in its role as regulator of NBN wholesale and related markets.

For instance the report would present greater visibility on the extent to which NBN access seekers have been able to secure access to different types of NBN access services. This could provide NBN access seekers with greater confidence to agree to NBN access arrangements or alternatively pursue negotiations with NBN Co for a change in access arrangements.

The publication of a Market Indicator Report would also provide visibility over data that the ACCC would likely rely upon on an ongoing basis in regulating NBN wholesale markets, and allow interested parties to have regard to these data in responding to ACCC inquiries or seeking the ACCC to initiate a new inquiry.

In addition, interested parties could highlight any discrepancies they believe exist in the data from time to time.

Enhanced transparency around regulatory practices should assist in providing confidence to regulated entities in the telecommunications sector and of the public more broadly about the functions of the ACCC.

Impact on legitimate commercial interests

Disclosure of information collected under a record keeping rule could potentially impact the legitimate commercial interests of a carriage service provider. For instance, were particularly sensitive information such as business plans or operating forecasts to be disclosed, this could impede an operator in effectively realising its legitimate commercial interests.

The ACCC's preliminary assessment is that the disclosure of market indicator data for NBN wholesale access services, and supplementing the existing Telstra's CAN reporting, would be unlikely to harm the legitimate commercial interests of carriage service providers.

Retail market indicator data (and in some cases wholesale market indicator data) are already available in various forms for the telecommunications market, with similar demand data published via a number of sources, including:

- business and financial reports made by carriers and carriage service providers themselves, including with regards to on net and off net services
- via regulators and government agencies; including the ACCC, the ACMA and the ABS, and
- through publication by analysts of the state of the telecommunications market.

The market indicator report under consideration would complement these existing data with a view of wholesale NBN access markets at the national or state/territory level.

Excluding NBN access seekers that acquire a small number of NBN access services from reporting, through the proposed 5% market share reporting rule, would provide a further safeguard against reporting impacting their commercial interests while they gain a presence in the market.

Costs and benefits of the proposed direction to disclose

The compliance costs faced by NBN Co and Telstra associated with the directions to disclose are likely to be low. Both firms already report to the ACCC quarterly with the proposed report predominantly a sub-set of the data already reported.

On the other hand, as noted above, publication would increase the stock of information about the wholesale NBN access market and transparency of the ACCC's regulation of that market, which would assist organisations to make more informed business planning and investment decisions. Publication of consistent market indicator data would also reduce information search costs for businesses that would otherwise seek alternative channels to locate market information. Policy makers could also make use of information to make better decisions about telecommunications policy leading to more efficient markets.

Consumer welfare would be enhanced through reduced end user costs as firms make more efficient business decisions and/or increased utility in consumption as firms deliver services and products that better address consumer wants.

Questions

- 1. Are there other data collected by the ACCC through the RKR that the ACCC has not proposed to publish that stakeholders would find useful to be reflected in the reports? If so, what?**
- 2. Do stakeholders have any concerns about proposed information to be disclosed? If so, what are these concerns and how could they potentially be addressed?**
- 3. Do stakeholders have any suggested changes to the proposed reporting templates?**
- 4. The ACCC proposes to report on access seekers by corporate group rather than on each individual access seeker that is part of a single corporate group. Which access seekers should be grouped in this way?**
- 5. If the ACCC were to report one CVC figure, either contracted CVC or CVC utilised, which figure would provide the better indication of demand in the market?**
- 6. If the ACCC were to report on access seekers by speed tier, should all speed tiers be reported separately or should some speed tiers be grouped? If speed tiers were grouped, into what groupings should speed tiers that are described in terms of a broad range (e.g., 25-50/5-10 or 25-100/5-40) be placed?**

NBN Services in Operation Record Keeping Rules

The NBN SIO RKR requires NBN Co to collect and provide to the ACCC data for each current NBN access service (i.e. FTTP, FTTB&N, wireless and interim satellite) at each point of interconnection (POI). Reports are provided to the ACCC quarterly.

Access virtual circuit (AVC)

NBN provides data for each POI with data provided for each NBN technology being FTTP, FTTB, wireless and interim satellite services.⁷ In particular, NBN Co must establish and maintain an electronic record containing the following information:

- a) the name of the POI
- b) the state or territory in which the POI is located
- c) the name of each access seeker being provided with access services at the POI and
- d) the total number of access service AVCs supplied for each traffic class (TC) TC-1, TC-2 and TC-4 grouped by data transfer rate 'tier' for each access seeker at the POI.

Connectivity virtual circuit (CVC)

NBN Co must establish and maintain records containing the following information:

- a) the name of the POI
- b) the state or territory in which the POI is located
- c) the name of each access seeker being provided with CVC services in connection with Existing Network Access Services at the POI
- d) the contracted CVC TC-1, TC-2 and TC-4 capacity in Mbps for Existing Network Access Services for each Access Seeker at the POI
- e) the average utilisation in Mbps for contracted CVC TC-1, TC-2 and TC-4 capacity for Existing Network Access Services between 7:00pm and 10:00pm daily for each Access Seeker at the POI and
- f) the average utilisation in Mbps for contracted CVC TC-1, TC-2 and TC-4 capacity for Existing Network Access Services for each Access Seeker at the POI.

⁷ The ACCC notes that NBN Co proposes to introduce FTTP services in Q3 2015 and HFC services in the first half of 2016, which will be included in the direction following their introduction

Attachment B

Telstra Customer Access Network Record Keeping and Reporting Rules

The Telstra CAN RKR requires Telstra for each exchange serving area (ESA) to keep an electronic record containing the following information:

- a) the name of the exchange
- b) the state in which the exchange is located
- c) the ESA Code
- d) the ULLS banding of the exchange
- e) the name of the access seekers being provided with the ULLS or LSS in that ESA and
- f) The total number of services in operation served by Telstra equipment for the following categories:
 - the number of voice only services in operation
 - the number of DSL only services in operation
 - the number of voice and DSL bundled services in operation and
 - the number of ULLS and LSS being used by each access seeker.

Attachment C

Proposed Reporting Templates

		NBN services in operation, national, by technology				
Class	FTTP		FTTN		FTTB	
	Tier	SIO	Tier	SIO	Tier	SIO
1	0.15 Mbps				0.15 Mbps	
	0.3 Mbps				0.3 Mbps	
	0.5 Mbps					
	1 Mbps					
	2 Mbps					
	5 Mbps					
	Total					
2	5 Mbps				5 Mbps	
	10 Mbps					
	20 Mbps					
	30 Mbps					
	40 Mbps					
	Total					
4	12/1 Mbps				12/1 Mbps	
	25/5 Mbps				25/5 Mbps	
	25/10 Mbps				25/5-10 Mbps	
	50/20 Mbps				25-50/5-20 Mbps	
	100/40 Mbps				25-100/5-40 Mbps	
	250/100 Mbps					
	500/200 Mbps					
	1000/400 Mbps					
	Total					
Grand Total						

HFC to be added. Additional Traffic classes and speed tiers to be added as released.

Wireless		
Class	Tier	SIO
1	0.15 Mbps	
	Total	
4	12/1 Mbps	
	25/5 Mbps	
	Total	
Grand Total		

Interim Satellite Service		
Class	Tier	SIO
1	0.06 Mbps	
	Total	
4	6/1 Mbps	
	Total	
Grand Total		

NBN aggregate CVC capacity, by state, by class			
Class	1	2	4
State	SIO	SIO	SIO
NSW/ACT			
Qld			
SA/NT			
Vic/Tas			
WA			
National			

NBN utilisation CVC capacity, by state, by class			
Class	1	2	4
State	SIO	SIO	SIO
NSW/ACT			
Qld			
SA/NT			
Vic/Tas			
WA			
National			

NBN services in operation, by state, by technology					
	FTTP	FTTN	FTTB	Wireless	Satellite
	SIO	SIO	SIO	SIO	SIO
NSW/ACT					
Qld					
SA/NT					
Vic/Tas					
WA					
Total					

NBN Points of Interconnect		
	# POIs	# Interim
# RSPs	#	#
0		
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

NBN Services by access seeker, national, by technology

Operator	FTTP		FTTN		FTTB	
	SIO	%	SIO	%	SIO	%
1						
2						
3						
4						
5						
6						
Other						
Total						

Operator	Wireless	
	SIO	%
1		
2		
3		
4		
5		
6		
Other		
Total		

Operator	Satellite	
	SIO	%
1		
2		
3		
4		
5		
6		
Other		
Totals		

NBN fixed line, national, by speed tier

Operator	12/1 Mbps		25/5 Mbps		25/10 Mbps		50/20 Mbps		100/40 Mbps		250/100 Mbps		500/200 Mbps		1000/400 Mbps		Total	
	SIO	%	SIO	%	SIO	%	SIO	%	SIO	%	SIO	%	SIO	%	SIO	%	SIO	%
1																		
2																		
3																		
4																		
5																		
6																		
Other																		
Total																		

NBN fixed line, by region

Operator	Metro		Regional		Total	
	SIO	%	SIO	%	SIO	%
1						
2						
3						
4						
5						
6						
Other						
Total						

ULL, by region

Operator	Metro		Regional		Total	
	SIO	%	SIO	%	SIO	%
1						
2						
3						
4						
5						
6						
Other						
Total						

NBN Wireless, national, by speed tier

Operator	12/1 Mbps		25/5 Mbps		Total	
	SIO	%	SIO	%	SIO	%
1						
2						
3						
4						
5						
6						
Other						
Total						

Fixed line, by state

Operator	NSW/ACT		Qld		Vic/Tas		WA		SA/NT	
	SIO	%	SIO	%	SIO	%	SIO	%	SIO	%
1										
2										
3										
4										
5										
6										
Other										
Total										

Wireless, by state

Operator	NSW/ACT		Qld		Vic/Tas		WA		SA/NT	
	SIO	%	SIO	%	SIO	%	SIO	%	SIO	%
1										
2										
3										
4										
5										
6										
Other										
Total										