



Statement of Expectations

The Australian Competition and Consumer Commission (**ACCC**) operates the broadband performance monitoring and reporting program, *Measuring Broadband Australia (MBA)* program (**the program**). The ACCC's program is independent, accurate, verified and reliable. The ACCC expects that industry interactions with the program will be consistent with these principles.

The MBA measures and reports on the typical performance of retail fixed broadband services and fixed access services, with a focus on NBN services. The ACCC appointed SamKnows Limited (**SamKnows**) to provide testing services for the MBA in December 2017.

This Statement sets out principles with which the ACCC expects service providers to interact with the MBA program (published on the ACCC website) in order to maintain the independence and credence of the MBA program.

Principles

1. *Act in good faith* – To act in good faith at all times when interacting with the program (e.g. by acting in such a way that would not call the program's independence into question, or compromise the accuracy of the program's representative sample or results).
2. *Respect anonymity and privacy of Volunteers*
 - Not to actively seek to identify program volunteers;
 - Not to publish or make use of any program test data or testing infrastructure in a way that would significantly reduce the anonymity of collected data, compromise a volunteer's privacy or conflict with the [ACCC & AER Privacy Policy](#).
3. *Adopt open recruitment practice* – Not to seek to preference or target certain customer groups or individuals when encouraging customers to join the program, including in any communications with customers about volunteering for the program. For example, a retail service provider (RSP) will not target consumers with particular service attributes, unless requested to do so by the ACCC, in writing.
4. *Maintain standard treatment of volunteer services* – Not to manipulate or interfere with the program testing infrastructure, methodology, or test results, either through positive act or omission. For example, not prioritise (or block) volunteer services or test traffic or take any steps to put itself in a position to do so.
5. *Not publish or cite additional program data* – Not to publish, share or make any public statement in relation to any data generated by the program prior to the ACCC releasing such data to the public, unless the ACCC has provided express permission in writing.
6. *Agents and employees* – To ensure that relevant employees, agents and representatives act in accordance with this Statement.

7. *Exception for ordinary business practices* – For the avoidance of doubt it will not be a violation of this Statement for RSPs, network owners or operators to:
- a. modify or improve their services as part of their broader or ordinary business operations or management practices to benefit broad classes of customers, or
 - b. address service issues for individual program volunteers at the request of the individual or based on information derived from sources outside of the MBA program, in accordance with the party's ordinary business practices.

For example:

- An RSP can provision additional network capacity for circuits that it uses to supply volunteers and other customers provided this is done in accordance with the same business rules that it applies to its network provisioning decisions more generally for services of that type/class.
- An RSP can apply network diagnostics or other tools to maintain volunteer services provided these same tools are made available to an equivalent extent for other services of that type/class.

ACCC monitoring

The ACCC considers RSPs' adherence to this Statement is important for maintaining the independence and fairness of the MBA reports. Accordingly, the ACCC will monitor the adoption of the Principles. Should the ACCC become aware that an RSP is not acting consistently with the principles in this Statement, it may be necessary for the ACCC to:

- a. not include an RSP's results in an MBA report and state the reason for not including the results; or
- b. note in MBA reports that the results collected for an RSP may not be reliable and the reason the ACCC considers the results not to be reliable.

Explanatory statement

Introduction

1. The statement of expectations is an important step towards greater service provider involvement in the Measuring Broadband Australia (MBA) program as has developed in similar monitoring programs conducted in other jurisdictions.
2. The MBA program has made a strong contribution to competition and consumer outcomes in broadband markets, and there is potential for the program to deliver these benefits in relation to a greater range of broadband services. In particular, involving service providers in recruiting volunteers can assist in obtaining the mix of volunteers that would allow the addition of an additional access network, additional service providers or additional retail plans to the reported results.

MBA objectives

3. The MBA program collects information about speed and quality of broadband services in real world conditions, with the results aggregated and reported for a range of access networks, retail service providers and retail plans. The MBA program is run independently of network operators and Retail Service Providers (RSPs), to ensure its credence among consumers and industry.
4. The overall aim of the MBA program is to assist consumers when choosing an RSP and to encourage the adoption of service quality as a further product dimension over which network operators and RSPs compete.

Intended outcomes of the statement of expectations

5. The intended outcomes of the statement of expectation are as follows:
 - a. *Maintain reliability as a measure of typical performance:* An important outcome is to preserve the representative nature of the test data as an indicator of performance across services more generally, not only the services being monitored.

While not an issue seen to date, there is potential for the MBA results to become less reliable should RSPs seek to identify test traffic and treat it (or all traffic of the volunteer service) differently to how it would under its business-as-usual network management and service assurance processes.
 - b. *Broaden program scope:* The statement of expectations is intended to facilitate the MBA program being broadened to make it relevant to more consumers. In this regard, RSPs could now provide a more active role in helping to recruit volunteers to fill test panels more completely and quickly, with safeguards in place so that volunteer panels remain representative of the full range of plan speed and quality experienced by consumers.
 - c. *Boost program efficiency:* Similarly, the statement of expectations is intended to facilitate a more efficient and cost-effective way of filling test panels. In this regard, all volunteer recruitment would still operate via an online portal (so that RSPs do not mediate acceptances). However, with RSPs more involved in volunteer recruitment across their customer base, recruitment can be better focused towards filling particular test panels more quickly.
 - d. *Maintain fairness:* RSPs have responded positively to the MBA program and are competing to achieve better results, both in terms of their own performance and as compared to other participants. The statement of expectations would also assist in preserving fairness between RSPs, allowing them to interact with the MBA test infrastructure on an equivalent basis and have equivalent access to insights about their MBA results.

Principles covered by the statement of expectations

6. The statement incorporates the following principles.

a. Act in good faith

The statement includes an overarching principle that service providers will act in good faith when interacting with the program, and not seek to undermine its status as a reliable indicator of typical speeds and quality as observed by end-user customers.

b. Respect for the anonymity and privacy of volunteers

The ACCC has ensured the privacy and anonymity of volunteers, and the independence of the program, by directly recruiting volunteers and not sharing their identities with RSPs. Consequently, the statement provides that an RSP will not attempt to identify active volunteers or test traffic.

This is consistent with the Australian Privacy Principles which provide for service providers not to record personal information – in this case that an identifiable person has chosen to be an active volunteer in the MBA – unless reasonably necessary for the service provider's business functions, and to do so by fair means.

c. Use open volunteer recruitment practices

The statement outlines that an RSP, when assisting in volunteer recruitment, will do so via a broad communication channel to its customer base. This is to avoid perceptions that the volunteer base could be skewed by the RSP's involvement in recruitment.

Not all customers that are recruited as a result of the RSP's efforts will become an active volunteer and host a test whitebox. The ACCC will select the volunteers to host a whitebox in line with current program requirements and the volunteer confirming their interest to do so.

d. Maintain standard treatment for active volunteers

The statement provides that an RSP will not discriminate in its supply of a service (positively or negatively) on the basis that the consumer is an active volunteer.

This would preclude an active volunteer from receiving a different level of support and assurance should the RSP become aware that the end-user was hosting a whitebox. For example, an RSP would not place a volunteer's NBN service on a Connectivity Virtual Circuit (CVC) with business rules for provisioning capacity that differ from the rules generally used for the type of broadband product/plan that the volunteer is acquiring, or mark some or all of the volunteer's traffic differently (i.e., to assign different priorities to that traffic) on the basis that they are an active volunteer.

Similarly, the RSP would not assign a volunteer's service to a different Access Virtual Circuit (AVC) class/tier than what would be provisioned in the ordinary course, or undertake additional assurance work that it does not make widely available to its customer base via a standard business process.

e. Not publishing or citing additional program data without permission

The MBA program generates additional program data which is not publicly released. This can be due to the data not having been fully validated or else the small sample size may mean there is less confidence that the data are broadly reflective of overall performance. While it is possible that this additional data could be shared with the service provider to the extent it was specific to their business, doing so could have unintended consequences if the recipient published or cited the data publicly.

Consequently, the statement provides that service providers will not publish data that it acquires or cite data that we have not publicly released or otherwise agreed in writing to the publication.

f. Responsibility for employees or other agents

The Statement notes that a service provider would be responsible for the actions of its employees or other agents/representatives.

g. Exception for ordinary business practices

To avoid doubt, the statement expressly provides that an RSP would not act inconsistently with the principles where they follow a standard business process that is generally applicable to their customers.

Interaction with the Australian Consumer Law

7. The statement of expectations does not affect the operation of the Australian Consumer Law, e.g., concerning the presentation of MBA data or other statements made in the course of trade or commerce.