



Broadband performance monitoring and reporting in the Australian context
Consultation Paper

Submission by AAPT Limited (AAPT)
to
Australian Competition and Consumer Commission (ACCC)

Introduction

Thank you for the opportunity to comment on the abovementioned Consultation Paper, dated 14 August 2013.

AAPT understands that the ACCC's primary intention in its proposal to implement a broadband performance monitoring and reporting program is to provide transparency to consumers about the performance of broadband services available in Australia.

AAPT respectfully disagrees with the ACCC's perceived need for such a program and posits that the regulations and frameworks already in place in the Australian telecommunications industry are more than sufficient to deliver transparency to Australian consumers. AAPT sets out the reasons for its views in further detail below.

As AAPT does not consider there is a need to implement a broadband performance monitoring and reporting program, it does not specifically address the ACCC's questions about how the proposed monitoring and reporting program should be implemented. Nevertheless, AAPT reserves its right to comment on any proposed processes for implementation should the ACCC decide to proceed with the proposal.

A broadband performance monitoring and reporting program is unnecessary

As we have stated above, AAPT considers that existing regulations and industry frameworks sufficiently promote transparent dialogue between broadband service providers and consumers in respect of broadband service speeds.

The *Competition and Consumer Act (2010) (Cth)*, for example, already imposes an overarching obligation on broadband service providers to ensure that they do not engage in misleading and deceptive conduct¹ or make false or misleading representations² when promoting the features or functionality of their services (including speed).

The recently updated Telecommunications Consumer Protection Code (TCPC) also requires broadband service providers communicate all offers “in a way which is clear, accurate and not misleading, to allow consumers to make informed choices.”³

Broadband service providers are therefore already legally required to ensure that they transparently and accurately describe and promote their services, including speeds at which their services operate.

The ACCC is empowered under the *Competition and Consumer Act 2010 (Cth)* to take action against broadband service providers who fail to comply with their legislative obligations to transparently communicate to their consumers the details of their services. Similarly, the Australian Communications and Media Authority (ACMA) is able to issue an infringement notice, accept enforceable undertakings or seek civil penalties if a broadband service supplier fails to comply with the TCPC and ACMA directions regarding their conduct.

In addition to the legislative and regulatory frameworks encouraging transparent and accurate disclosures of service performance, the ACCC has already made a considerable effort to educate both service providers (in respect of their obligations to ensure services are properly described and promoted) and consumers (in respect of what they should reasonably expect from a service provider, and their options if they are concerned about any service provider practices).

The ACCC has released detailed guides and run information sessions for broadband service providers regarding legal requirements and ACCC expectations regarding speed claims and

¹ Section 18, Schedule 2 of the Competition and Consumer Act 2010 (Cth)

² Section 29, Schedule 2 of the Competition and Consumer Act 2010 (Cth)

³ Rule 4.1 of the Telecommunications Consumer Protection Code (2012)

service performance. Information is also readily available for both broadband service providers and consumers on the ACCC website.

Given the comprehensive frameworks in place, the resources available to all relevant parties and the recent ACCC campaign focusing on the telecommunications industry and promotion of best practice, AAPT does not consider that there is any need for further ACCC involvement in this space. In fact, there is a risk that consumers will be overloaded by further regulatory initiatives and information regarding broadband performance and services.

As a final point, AAPT suggests that further consideration and clarification be given to the concept of “the consumer” in the context of the proposed program. The Consultation Paper does not state whether the proposed performance program is intended to apply to broadband services for personal and/or domestic use only, or whether it extends to services supplied to businesses (and if so, what size of business). AAPT does not consider that there is any value in applying this program (if it were to proceed) to services supplied to the business, corporate or government sectors, as these industries are generally well resourced and sophisticated in terms of broadband service acquisition. Accordingly, if the ACCC does ultimately implement a broadband performance monitoring and reporting program, it should exempt those service providers, such as AAPT, who do not primarily supply broadband services to the residential and small business market.