



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Broadband speed claims

**Industry guidance—Consultation report on  
updating the guidance**

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Australian Competition and Consumer Commission  
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# 1. Introduction

## 1.1 About this report

This report outlines the enhancements that were made to our [Broadband speed claims—Industry guidance](#) (Guidance) in October 2020 and explains the basis for these changes.

This update follows a consultation process that concluded in August 2020. Our [Broadband Speed Claims—Consultation paper \(July 2020\)](#) (Guidance Update Consultation) sought views from stakeholders about issues relevant to the presentation of consumer information about broadband speeds, with a particular focus on services with wholesale download speeds in excess of 100 Mbps (>100 Mbps Services). Our Guidance Update Consultation outlined proposed enhancements to the Guidance and included a marked-up version of the Guidance with our proposed changes.

This report provides a summary of key aspects of the 10 submissions that were received as part of the Guidance Update Consultation and the position we have adopted in our updated Guidance. It is intended to be read with the Guidance. Submissions are available on the ACCC [website](#).

## 1.2 Background

In August 2017, we published the Guidance as a best practice guide for retail service providers (RSPs) on how to advertise speeds for fixed-line broadband services, including clearly identifying typical busy period speeds. The Guidance was developed in response to high levels of concern, complaints and dissatisfaction about perceived 'slow data speeds' and a desire among consumers for easily comparable speed and performance information. The Guidance was designed to assist RSPs in providing consumers with reliable and clear information about the performance of their fixed-line broadband services.

In November 2018, we reported on the effectiveness of the Guidance and consulted on further enhancing it. Following that consultation we updated the Guidance in May 2019 to improve clarity, maintain currency and cover services supplied over fixed wireless networks.

Our 2020 Guidance Update Consultation was prompted by NBN Co's launch of three new wholesale broadband products that have peak wholesale download/upload speeds of up to 100/20 Mbps, 250/25 Mbps and 500-990/50 Mbps (New NBN Products).<sup>1</sup>

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1 NBN Co, NBN launches three new residential wholesale higher speed tiers, 29 May 2020, <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-launches-three-new-residential-wholesale-higher-speed-tiers>, viewed 16 July 2020.

## 2. Enhancements made to the Guidance

We proposed updating the Guidance so that it continues to support informed markets, promote consumer satisfaction and to assist the practicality of applying the Guidance in light of recent market development. In this section of the report we outline the key issues we consulted on, the submissions received and the corresponding enhancements made to the Guidance to achieve those aims.

### 2.1 Issue 1: where wholesale product specifications give a range of speeds and burst speeds

#### 2.1.1 Overview of the issue

Some of the New NBN Products have wholesale product specifications which express the maximum download and upload speeds available for those products by reference to a very broad range of speeds. For example, the fastest of the New NBN Products gives a significant download speed range of 500 to 990 Mbps.

Additionally, some wholesale product specifications also refer to a 'burst' speed, being a speed that is faster than typical off peak speeds but may be achieved only over short periods, such as around 1 minute.

In these circumstances, there could be heightened risk of poor market and consumer outcomes should RSPs rely on wholesale product specifications in their marketing when describing their retail broadband products.

We sought comment from stakeholders on:

- marketing >100 Mbps Services uniformly regardless of underlying access technology. This is important because RSPs under the Guidance are encouraged to provide typical busy period speed claims specific to the plans offered
- utilising the lowest end of a range of speeds provided by a wholesale provider, where RSPs rely on that information in advertising typical off peak speeds
- burst speeds
- informing consumers of any differences between the off-peak speed they can receive and what is described in retail marketing material.

#### 2.1.2 Summary of submissions received

##### **Marketing >100 Mbps Services uniformly regardless of underlying access technology**

Some RSPs indicated that they are looking to market >100 Mbps services uniformly regardless of NBN access technology.

Some RSPs indicated that they would effectively gate access to these retail plans so that they were only accessible if a qualifying address is entered into a web form, while other RSPs did not indicate an intention to use this approach.

## Utilising the lowest end of a range of speeds provided by a wholesale provider for off peak speeds

Stakeholders had different views as to whether RSPs should use the lowest end of a range of speeds specified by a wholesale provider for marketing off peak speeds. Key points raised were:

- RSPs should ensure that a realistic, clear and consistent expectation is set for consumers
- an alternate speed to the minimum specified by the wholesale provider should be able to be used where RSPs are confident consumers can achieve higher off peak speeds
- it would be confusing to use of the lowest speed where a range is given for those wholesale services where the product specifications for both 50/20 and 100/40 products have a download speed range beginning at 25Mbps
- off peak speeds measured in accordance with the ACCC's methodology should be used.

## Clarify off peak speed expectations for particular consumers where they differ from what is described in marketing material

Stakeholders provided varied comments on the proposal that RSPs clarify off peak speed expectations for individual consumers where they differ from the speeds expressed in marketing material. The views provided were:

- the Australian Communications and Media Authority's (ACMA) Telecommunications Service Provider (NBN Service Migration) Determination 2018 covers this issue so regulatory overlap is possible
- consumers are already provided with relevant information when they connect and have remedies available if those expectations are not met
- additional speed reporting from NBN Co would be required to cover consumers who use their own equipment
- consumer confusion could occur if RSPs advise that off peak speeds are higher than originally advertised
- consumers should be advised where the actual off peak speed available is lower than the speed advertised by the RSP and it would be best practice to also advise where it is higher than the speed advertised by the RSP.

## Conveying burst speeds to consumers

Stakeholders generally submitted that burst speeds could not be conveyed in a manner that is easily understandable to consumers. In addition, some stakeholders submitted that burst speeds should not be used as a proxy for off peak speeds and where burst speeds are used, they need to be clearly explained.

### 2.1.3 Position adopted in the Guidance

Principle 2 of the Guidance has been updated to clarify that where an RSP chooses to provide off peak<sup>2</sup> speed information for retail plans based on wholesale services with maximum speed specifications expressed as a range, an RSP should take a conservative approach and use a speed at the lower end of the range, unless it holds sufficient information that would allow a more accurate claim to be made.

Additionally, the Guidance adopts the view that burst speeds from wholesale product specifications should not be used as a proxy for off peak speeds in retail marketing.

The Guidance has also been updated to reflect that where the actual off peak speed a particular consumer is able to receive is lower than the advertised off peak speed, this difference should be advised to the consumer. The Guidance also provides that it is best practice to advise the consumer if their actual off peak speed is higher than the advertised off peak speed. We note that differences in actual and advertised off peak speeds are more likely to occur where RSPs do not advertise their off peak speeds on an access technology specific basis.

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<sup>2</sup> The **busy period** falls between 7 pm and 11 pm each day, and the **off peak** period is outside these hours.

We note that this revision is complementary to the abovementioned ACMA Determination in the sense that there is little risk that an RSP could not comply with one on the basis of a requirement specified in the other.

## 2.2 Issue 2: promoting online gaming applications

### 2.2.1 Overview of the issue

We have observed that some RSPs advertise particular retail broadband plans as being able to deliver a good online gaming experience and so we sought views on whether we should include online gaming as an additional example of an application that RSPs should not claim their plans support unless RSPs can optimise their networks for gaming.

### 2.2.2 Summary of submissions received

#### Provisioning their networks to provide a high quality gaming experience

Some stakeholders submitted that there are no significant barriers to RSPs provisioning their networks to provide for a high quality gaming experience. The factors raised as impacting on gaming experience were:

- speed
- cost
- latency from the wholesaler
- connectivity to gaming networks
- configuration of gaming hardware and servers.

Other points made with respect to gaming were:

- there is a difference between network performance for playing games and downloading game updates
- a plan should not be marketed as suitable for gaming if factors within the RSPs control meant that traffic demand could not be met to provide an optimal experience and that consumers should be provided with realistic estimations of the quality of gaming experiences, including when the network is overloaded
- in making general statements, such as 'a network built for gamers' RSPs should have regard to the specific network or end to end quality metrics.

### 2.2.3 Position adopted in the Guidance

The Guidance does not suggest that RSPs need to list in their marketing the specific applications that their plans support however, where RSPs do make such statements it is important that RSPs provision their networks in a way that supports the claims made. In terms of gaming, for example, it would be important that the networks provided low latency connections to online gaming servers.

Principle 3 of the Guidance has been updated to include promotion of online gaming applications as an example of where RSPs should consider the suitability of their retail plans to deliver a high quality gaming experience.

## 2.3 Issue 3: general disclaimers about limited geographic availability of certain broadband products and requirements for specific consumer equipment

### 2.3.1 Overview of the issue

NBN Co has stated that its >100 Mbps Services are currently available in specified geographic areas.<sup>3</sup> In addition, we understand that certain >100 Mbps Services are only available where a modem with particular specifications is used. We were interested in views on the disclosure of the above issues to consumers.

### 2.3.2 Summary of submissions received

#### Proposed changes to principle 4 of the Guidance

Stakeholders generally considered that geographic disclaimers should be provided for >100 Mbps Services. Similarly, no specific objections were raised in respect of disclosing equipment specific requirements for >100 Mbps Services.

### 2.3.3 Position adopted in the Guidance

Principle 4 of the Guidance adopts the position that RSPs should make appropriate disclosures for >100 Mbps Services as these speeds are not supported across the entirety of the underlying wholesale access network.

Additionally, where a modem with particular specifications is required to achieve the full speeds of an advertised retail plan, and the cost of the modem is not included in the cost of the retail plan, this should be prominently brought to a consumer's attention.

## 2.4 Issue 4: descriptive labels

### 2.4.1 Overview of the issue

When the Guidance was published in 2017, the fastest product commonly available in the market had an off peak speed of 100 Mbps. >100 Mbps Services are now available. A further development is that wholesale products with the same download speed, but different upload speeds, are now available.

We sought comment from stakeholders on:

- using the 'Premium' label for >100 Mbps Services, or whether having a new label for >100 Mbps Services was preferred and what the potential benefits and downsides would be
- whether wholesale products with the same download speeds, but different upload speeds should be labelled in the same way.

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<sup>3</sup> NBN Co, *NBN launches three new residential wholesale higher speed tiers*. National Broadband Network, 29 May 2020, <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-launches-three-new-residential-wholesale-higher-speed-tiers>, viewed 16 July 2020.



## 2.4.2 Summary of submissions received

### Application of the 'Premium' label to >100 Mbps Services or development of new labels

A number of stakeholders did not support applying the Premium label to >100 Mbps Services, or developing new labels for those services. The key points raised were:

- there are no benefits to including new labels
- further labels are unlikely to be required given customers for >100 Mbps Services are at the premium end of the market
- there is no product differentiation between services by using one label, which could confuse or mislead consumers
- the wholesale product name suffices and is less confusing than grouping services under the 'Premium' label.

Two stakeholders were supportive of developing new labels for >100 Mbps Services and indicated that labels would provide clarity and assist consumers to make informed choices.

### Treating wholesale products that have the same download speeds, but different upload speeds, in the same way for the purpose of labels and typical busy period speed claims

There were varied responses from stakeholders regarding treating wholesale products that have the same download speed, but different upload speeds, in the same way for the purpose of labels and Typical Busy Period Speed claims.

Two stakeholders supported this, and two further stakeholders supported products with the same wholesale download speed being tested together for the purpose of typical busy period speeds as it is based on download speeds not upload speeds.

One stakeholder stated it did not support this and another stakeholder supported different labelling for download and upload speeds as it considered that upload speeds are also an important product differentiator.

## 2.4.3 Position adopted in the Guidance

Principle 5 of the Guidance states that performance information should be presented in a manner that is easily comparable by consumers and that this could be best achieved by using a text-based label to be included in plan descriptions and plan marketing. This is because labels can make it easier for consumers to make more confident plan selections as compared to where only quantitative information is provided. Labels can also be a useful way for service providers to present their plans in hard copy marketing material given that measures of typical busy hour speed can change within a reasonable range over time.

Having considered the submissions received, we have chosen to maintain this aspect of the Guidance largely as is. We have made some amendments on points of detail to confirm our view that it would be reasonable for RSPs to also label services that are supplied using >100 Mbps access products as 'Premium' (provided they have a typical evening speed measure of above 60 Mbps) and to categorise plans based on typical download speed.

This means that the 'Premium' label can be used for plans that have the same download speed but a lower upload speed than other such plans in market, and typical evening speed claims can be based on testing of an unbiased sample of retail services that have the same download speed claim even if different upload speed claims are made.

We have decided against adding a further label for the highest plan speeds at this time because we are concerned that having too many labels could confuse many consumers, and we are not convinced that there is a need to differentiate between plans within the 'Premium' category to assist the sub-set of consumers interested in those plans to make confident plan selections.

This approach reflects that consumers purchasing high-end products are likely to be assisted by having their search narrowed to plans that are labelled as 'Premium', but that these particular consumers could then critically assess the speed and other attributes of each plan in that category before making a product selection. At the same time, other consumers are less likely to misinterpret the labels or find it more difficult to identify which product grouping is of more relevance to them by not expanding the number of labels.

We also considered whether we should look to alter the qualifying speeds used to categorise plans into different label groupings, but have reached the view that this would be premature. In this regard, demand for retail plans sold over 100 Mbps and above access services is still developing, but remains at a level that suggests consumers see those plan speeds as an optional feature.<sup>4</sup> Further RSP NBN Key Fact Sheets<sup>5</sup> suggest these plans are mostly suitable only for larger households that represent only a small proportion of all premises. Also, based upon modelling undertaken by the latest research from Bureau of Communications and the Arts Research, 60 Mbps still appears to be a reasonable delineation point between premium and other speeds.<sup>6</sup>

## 2.5 Other comments raised by stakeholders

Stakeholders also provided the following views:

- the examples used within the Guidance could be viewed as prescriptive expectations of how services should be provisioned which could prevent RSPs from creating new and varied offerings
- six stakeholders did not support the ongoing use of the descriptive labels
- one stakeholder stated that the approach to marketing for fixed wireless plans should be the same as it is for mobile services (which are not subject to the Guidance).

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4 *NBN Wholesale Market Indicator Report* <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/june-quarter-2020-report>, 13 August 2020.

5 Key Fact Sheets are required by the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (Cth) s 8(1)(c).

6 Bureau of Communications and Arts Research, *Demand for fixed-lined broadband in Australia 2018–2028—working paper* <https://www.communications.gov.au/publications/demand-fixed-line-broadband-australia-2018-2028-working-paper>, page 23.



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