



Australian  
Competition &  
Consumer  
Commission

# Broadband Speed Claims

## Focused Implementation Consultation Report

August 2017

---

### Version Control

---

August 2017

Version 1

# 1. Introduction

## About this report

- 1.1. This report explains the basis of a number of positions adopted by the ACCC in preparing its *Broadband Speed Claims – Industry Guidance* (the **Guide**).<sup>1</sup> The Guide provides detailed information on how broadband retail service providers (**RSPs**) should implement the six principles that the ACCC released in February 2017 (the **Principles**). The Principles were published with the *Broadband Speed Claims – Consultation outcomes report*<sup>2</sup>, which reported on a public consultation conducted during 2016 and which informed the development of the Principles. The Principles are:
- Principle 1: Consumers should be provided with accurate information about typical busy period speeds that the average consumer on a broadband plan can expect to receive
  - Principle 2: Wholesale network speeds or theoretical speeds taken from technical specifications should not be advertised without reference to typical busy period speeds
  - Principle 3: Information about the performance of promoted applications should be accurate and sufficiently prominent
  - Principle 4: Factors known to affect service performance should be disclosed to consumers
  - Principle 5: Performance information should be presented in a manner that is easily comparable by consumers, for example by adopting standard descriptive terms that can be readily understood and recognised, and
  - Principle 6: RSPs should have systems in place to diagnose and resolve broadband speed issues.
- 1.2. To assist stakeholders in implementing the Principles, in March 2017 the ACCC consulted directly with key stakeholders on their implementation in the form of a written information request (**March Consultation**). The stakeholders consulted included both small and large RSPs, along with industry and consumer representative bodies.
- 1.3. Following the March Consultation, in June and July 2017, the ACCC conducted subsequent bilateral meetings and engaged in further correspondence with key stakeholders that had provided responses to the March Consultation (**Subsequent Consultation**). The purpose of the Subsequent Consultation was to seek feedback on the key marketing practices that the Guide seeks to address and associated issues.
- 1.4. The ACCC also sought advice and assistance from an independent external technical industry expert throughout the consultation process.

---

<sup>1</sup> See ACCC, 'Broadband 'speed' claims - information papers', <https://www.accc.gov.au/regulated-infrastructure/communications/compliance-anti-competitive-conduct/broadband-speed-claims-information-papers>.

<sup>2</sup> See ACCC, 'Broadband 'speed' claims - information papers: Consultation outcomes', 10 February 2017 <https://www.accc.gov.au/regulated-infrastructure/communications/compliance-anti-competitive-conduct/broadband-speed-claims-information-papers/consultation-outcomes>.

1.5. This report provides a de-identified summary of the responses provided during both the March Consultation and the Subsequent Consultation. It is intended to be read with the Guide. It covers the following issues from the March Consultation:

- determining the 'busy period'
- methodology for measuring and representing typical busy period speed
- consumer information templates
- speed labels
- implementation timeframes

and the following issues from the Subsequent Consultation:

- testing methodology
- preferred label approach
- preferred label
- issues regarding information for services that use FTTB/N<sup>3</sup> infrastructure.

---

<sup>3</sup> Fibre to the basement (FTTB); Fibre to the node (FTTN).

## 2. Consultation

### March Consultation

- 2.1. In this section of the report we: provide an overview of the key issues the subject of the March Consultation; set out the questions posed in the March Consultation; provide a de-identified summary of the responses provided by stakeholders; and outline the position adopted in the Guide in relation to each issue.

#### **Issue 1: Determining the ‘busy period’**

##### *Overview of issue and Information request*

- 2.2. RSPs should present information about the typical speed during the ‘busy period’ when marketing broadband plans. The information should be representative of the speed of the plan during the busy period, given this is when more consumers will want to use the service and there is greatest potential for plans to deliver different speed outcomes for consumers depending upon the choices made by the RSP.
- 2.3. We sought comment from stakeholders on the following:
- (a) We noted we considered it would be reasonable to adopt either the period 7 pm to 10 pm, or 7 pm to 11 pm, as the busy period. We invited comment on which of these busy periods should be adopted.
  - (b) We noted that if stakeholders considered neither of the proposed busy periods in (a) should be adopted, to please provide views to support any alternative time period.

##### *Summary of submissions received*

- 2.4. Stakeholders generally supported defining a busy period as being between 7 pm and 11 pm, while some supported a shorter busy period of between 7 pm and 10 pm.

##### *Position adopted in the Guide*

- 2.5. The Guide adopts a typical busy period of between 7 pm and 11 pm. There is evidence to suggest the busy period continues into at least some portion of the 10 pm-11 pm period, accordingly we decided that including this additional hour is useful in providing a complete view over the busy period. That said, as a consequence of the approach proposed in the Guide to calculating the measure of busy period speed (see Attachment A to the Guide), the inclusion of this additional hour is unlikely to affect the typical busy hour speed that is calculated for a plan.

#### **Issue 2 – Methodology for deriving an accurate measurement of ‘typical busy period’**

##### *Overview of issue and Information request*

- 2.6. RSPs should present information about the typical busy period download speed of a broadband plan. The typical speed should be provided when marketing fixed broadband plans supplied over the NBN or other next generation access networks.
- 2.7. We sought comment from stakeholders on the following:
- (a) Which network elements should be included in RSP measurements, to ensure RSP representations about typical speed reflect the speed at which the

broadband service provides access to a location at which popular internet content is stored, and are prepared on a comparable basis across RSPs? The ACCC considered the speed should be measured from the modem in the consumer premise to a domestic data exchange at which RSPs access most popular internet content and applications.

- (b) Whether it would be feasible to take observations more frequently than on an hourly cycle during the busy hour, e.g. at 30 minute intervals.

### ***Summary of submissions received***

- 2.8. Stakeholders generally supported the use of the consumer's modem as the consumer end point for performance testing but most did not agree that domestic data exchanges would be the appropriate location for the RSP end point. Stakeholders' concerns focused on potential technical issues that may be outside of RSPs control.
- 2.9. Another concern raised by stakeholders was the potential for RSPs to design their networks or testing procedures to manipulate the results.
- 2.10. Stakeholders supported measuring performance on an hourly basis. Some responses called for more frequent sampling (i.e. twice hourly) to ensure that accurate results are produced.

### ***Position adopted in the Guide***

- 2.11. The Guide adopts the view that testing should measure speed from the modem in the consumer premises to a data centre at which most frequently accessed internet content is hosted and that testing should occur at least hourly. The Guide maintained this approach on the basis of technical advice received, to the effect that speed tests that only considered the RSP's broadband access network would not be representative of typical plan speeds for a consumer that would be using their service to access internet content that was stored on a peered network.

## **Issue 3 – Methodology for representing typical busy speeds**

### ***Overview of issue and information request***

- 2.12. We invited information about the implementation of a specified methodology for calculating the typical speed for a plan. One aspect of the methodology involved the identification of the minimum speed that 80 per cent of sampled services delivered 80 per cent of the time. Particularly, we sought views about whether there were obstacles to implementing the proposed methodology.

### ***Summary of submissions received***

- 2.13. While some stakeholders supported the proposed methodology others expressed the view that methodology was too complicated to implement and raised concerns about how practicable it might be to demonstrate that the resulting statistics were representative of the broader population of services supplied on the broadband plan.

### ***Position adopted in the guidance***

- 2.14. The Guide has adopted an alternative methodology. The methodology adopted in the Guide allows a mean value to be used in order to calculate the typical speed for the broadband plan during each busy hour in the sample period. The third lowest of these hourly measures over the fourteen day sample period is then identified and used to select an appropriate speed label.

- 2.15. In testing this proposed alternative method with stakeholders, some RSPs indicated a preference for the hourly speed measures to also be averaged, however, our industry expert noted that selecting an hourly measure that is towards the lower of the range of observed measures is particularly important to provide suitable assurance that the busy hour speed label accurately represents the typical busy hour speed that a consumer on the plan could expect to receive.

## **Issue 4 – Comparable consumer information template**

### ***Overview of issue and information request***

- 2.16. We sought views about whether there were any impediments to providing the information in the consumer information template set out in the March Consultation.

### ***Summary of submissions received***

- 2.17. Stakeholder responses to this issue were mixed. Some supported the adoption of a template while others did not. It was also noted that the Telecommunications Consumer Protection Code C628:2015 Code (**TCP**) obliges RSPs to include information in Critical Information Summaries (**CIS**) and the Guide should be developed to complement the TCP Code.

### ***Position adopted in the guidance***

- 2.18. The Guide does not require the adoption of a consumer template. Instead, it nominates a simple labelling scheme which indicates for the consumer the typical busy hour speed of the relevant plan. As well as bringing this aspect of the plan to the consumer's attention, basing these labels on a common rubric and simple terminology has the added benefit of the information being presented in a manner that is easier to understand without technical knowledge and more readily comparable by consumers.
- 2.19. Under this approach, a busy hour speed label is to be attached to all broadband plan-specific marketing materials. This is discussed further below.
- 2.20. The Guide makes clear the application of the labels is not intended to limit an RSP in terms of its retail product development or from providing additional speed-related information to consumers as part of its marketing activities.

## **Issue 5 – Use of speed labels**

### ***Overview of issue and information request***

- 2.21. We sought views about whether there are any impediments to applying the speed labels proposed in the March Consultation.

### ***Summary of submissions received***

- 2.22. While some stakeholders supported the use of speed labels the majority of RSPs did not. The concerns expressed by RSPs were:
- (a) speed labels may create greater confusion for consumers due to the departure from the use of wholesale access line speeds
  - (b) speed labels could restrict RSPs from being able to differentiate their products from competitor products

- (c) where there are continual shifts in busy hour performance results, RSPs may inadvertently provide misleading information to consumers where they rely on prior testing, and
- (d) speed labels (or other indicators of busy hour speeds) are burdensome to implement.

### ***Position adopted in the guidance***

- 2.23. We had regard to the views expressed by RSPs in developing the Guide but, as noted above, have proceeded to issue the Guide on the basis that the use of a descriptive label approach is the most appropriate way for typical plan speeds to be represented to consumers at this time.
- 2.24. In reaching this view, we had regard to mass migration of services to the NBN and similar next generation broadband networks that is currently underway, in which many consumers are being asked to select a broadband speed for the first time. We considered that consumers at this time require additional assistance in readily identifying, from amongst the large number of different plans that are becoming available to them, the plans that are more likely to have busy hour speeds that suit their needs. We also reached the view that it would be more practicable for RSPs to implement a labelling based approach to communicating this information to consumers.
- 2.25. The Guide does not restrict RSPs from providing further speed-related or other information in the plan marketing.
- 2.26. As is the case with all product marketing, RSPs also need to be satisfied that their marketing complies with the Australian Consumer Law (**ACL**).

## **Issue 6 – Implementation timeframes**

### ***Position adopted in the guidance***

- 2.27. The implementation timeframes in the Guide have been amended to take into account the revised labelling approach set out in Principle 5 of the Guide – for which we have set out a 3 month implementation period to allow for RSPs to put in place any necessary arrangements for testing the busy hour speeds of the retail plans.
- 2.28. In addition, we note that the Federal Government will fund a Broadband Performance Monitoring and Reporting program<sup>4</sup>, which will provide additional transparency over testing undertaken by RSPs over a broadly similar timeframe.

---

<sup>4</sup> ACCC, 'ACCC to monitor Australia's broadband performance' (7 April 2017), <https://www.accc.gov.au/media-release/accc-to-monitor-australias-broadband-performance>.

## Subsequent consultation

- 2.29. Having regard to the issues raised during the March Consultation, in June and July 2017, we conducted bilateral consultations with 11 industry stakeholders and consumer representatives to discuss the proposed guidance. The key marketing practices that the Guide seeks to address in the short term and associated issues were discussed.
- 2.30. The meetings were followed by further direct engagement including seeking feedback on the content of Attachment A of the Guide, which relates to how typical busy period speeds should be provided. Only a small number of substantive responses were received to the further direct engagement.
- 2.31. We sought further feedback on four issues, the first three of which are discussed earlier in this report and the fourth is not. Those issues were: testing methodology, preferred label approach, preferred label, and issues associated with services supplied using FTTB and FTTN infrastructure. Stakeholders' views on each issue and the position adopted in the Guide follow.

## Testing methodology

### *Stakeholders' views*

- 2.32. Stakeholders preferred a testing methodology that is based on a 14 day reporting period, or a reporting period that is a multiple of seven days. Stakeholders also preferred a testing methodology that uses a simple average measure. Stakeholders were divided on whether regular network monitoring should be required.

### *Position adopted in the Guide*

- 2.33. The Guide has adopted a 14 day reporting period but, as discussed above, does not adopt a simple average measure as that would be unlikely to provide suitable assurance that the busy hour speed label accurately represents the typical busy hour speed that a consumer on the plan could expect to receive. The Guide also provides that RSPs should continue to monitor the occupancy of their network capacity during the busy hours, and to retest the speeds of their broadband plans where this has materially changed since the last sampling was undertaken. This balances the cost of undertaking end-consumer testing more frequently than once per quarter, while still providing assurance that previous testing remains applicable to current speeds.

## Preferred label approach

### *Stakeholders' views*

- 2.34. Most RSP stakeholders preferred a labelling approach that is based on the NBN wholesale product construct with typical busy period information provided as a subsidiary piece of information.

### *Position adopted in the Guide*

- 2.35. The Guide provides that the label should be based on the typical busy period speeds that RSPs deliver on their respective plans. This is because RSPs can potentially provision and manage their services in a variety of ways that would affect the speeds of their retail plans in the busy hours, which is when most consumers are likely to be using the service. In these circumstances, it is the typical busy hour of the retail plan (and not the speed of the underlying wholesale access service) which most

consumers will require accurate and comparable information about in order to make an informed purchase decision.

- 2.36. On the other hand, relying on wholesale access speeds to label retail plans creates the real risk of misleading consumers that these are the speeds that they will likely receive when they are most likely to want to use the service (i.e. the typical busy periods, which for residential customers is the evening period between 7 pm–11 pm).

## **Preferred label**

### *Stakeholders' views*

- 2.37. A number of RSPs preferred the labels: basic, standard, fast, very fast. Other suggestions did not use descriptive terms (e.g. star ratings, medal ratings).

### *Position adopted in the Guide*

- 2.38. The labels adopted in the Guide are: 'basic evening speed', 'standard evening speed', 'standard plus evening speed' and 'premium evening speed'.
- 2.39. As discussed previously, an advantage of the use of these label names is that they can direct consumers towards plans with speeds that are potentially of greater relevance and value to them based upon their busy hour usage profile.
- 2.40. For instance, the 'basic evening speed label' would indicate that the plan is of most relevance for consumers whose evening usage of their broadband service requires only basic speeds.
- 2.41. We considered a number of alternative options in arriving at the label names, however, the approach taken is considered preferable because it avoids the risk of creating the impression that the services have been independently certified, as could have been the case if a star or medal based scheme was used. The simple text based labels can also provide greater clarity over the type of usage profiles that the retail plan is intended to support.
- 2.42. In this regard, when developing the common rubric for deciding which label would be appropriate to apply to a retail plan, we first identified as a benchmark an evening usage profile for a standard residential NBN service. The usage profile adopted was streaming a video application in high definition (1080p) to a television screen, plus an additional web browsing type application. We then considered the minimum broadband speed that would provide assurance that a consumer with such a usage profile would still be able to maintain a good experience during the busy hour, and adopted this as the minimum typical plan speed for the use of the 'standard evening speed' label.
- 2.43. The further labels were developed having regard to evening usage profiles that feature multiple concurrent uses of the standard usage profile and/or featured higher-bandwidth, niche applications, such as 4k video or virtual reality applications.
- 2.44. We recognise that usage profiles can change as consumer preferences shift and new internet based applications emerge. In addition, we note the Guide will be reviewed in the next 12 months.

## **Issues regarding information for services that use FTTB/N infrastructure**

### ***Stakeholders' views***

- 2.45. Stakeholders expressed the view that they are limited in the extent to which they can advise those consumers that are connected to FTTB/N infrastructure of the speeds they can typically expect in off peak times, as well as during busy hours, until they have been connected to the network for the first time. Consequently, there was broad recognition that RSPs should take additional steps to advise these consumers of what speeds they should expect over their particular connections during their engagement with those customers.
- 2.46. Some RSPs expressed the view that there would be limited value in providing consumer specific speeds information to those consumers of FTTB/N services that would receive the full speeds typically associated with their selected plan. This is where the consumer has selected a plan with an off peak speed that is below the maximum attainable speed for their individual connection to the network. Some RSPs also considered that 6 weeks was a reasonable timeframe to contact consumers where this was required.

### ***Position adopted in the Guide***

- 2.47. The Guide recognises that consumers are entitled to know about potential limitations in the service they are purchasing prior to sale and that the potential limitations of FTTB/N services should be signalled in an upfront disclosure. In addition, the Guide provides detailed guidance about how RSPs should manage and respond to consumers using FTTB/N services.

### 3. Future review of the Guide

- 3.1. The Guide will be reviewed in 12 months to ascertain whether it has been effective in addressing consumer concerns about broadband speed claims and the comparability of fixed-line broadband plans.