



NBN Services in Operation Record Keeping Rules Disclosure Direction

Explanatory Statement

November 2018



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Executive Summary

The ACCC has varied a direction to NBN Co to enable the ACCC to publish a quarterly report on National Broadband Network (NBN) access services that will include new network access services as they become available.

Pursuant to the Disclosure Direction, NBN Co is required to prepare and provide to the ACCC for publication a tabular report setting out a summary of selected information collected by NBN Co under the NBN Services in Operation Record Keeping and Reporting Rules (NBN SIO RKR).

The report (known as the *NBN Wholesale Market Indicators Report*) includes eight tables setting out the number of NBN access services for each access network technology, geographic region, speed tier, traffic class, Point of Interconnection (POI) and in some cases NBN access seeker or access seeker group. The report also includes information on the aggregate contracted capacity across all NBN connectivity virtual circuits (CVC) and the number of NBN access seekers at each NBN POI.

Reporting this information will continue to provide insight into the development of NBN markets as the NBN rollout continues and provide a basis for market outcomes to be observed and assessed by a range of stakeholders. This will promote competition in services supplied over the NBN and facilitate the operation of Part XIB and XIC of the *Competition and Consumer Act 2010* (Cth) (CCA). This will in turn promote competition and the efficient investment in, and use of, infrastructure and benefit end-users through lower prices and/or a wider choice of services that better meet their requirements.

The varied Disclosure Direction provides for NBN Co to automatically report on new network access services as they become available.

Publishing the report will increase the amount of publicly available market information and allow market participants to make better and more informed decisions. The ACCC considers that the change will promote competition by improving transparency and provide greater detail on the status of the NBN rollout in particular geographic areas.

The ACCC considers that the report will facilitate the operation of Part XIB and XIC of the CCA by making available detailed market information that will assist stakeholders and the ACCC in their assessment of the market for NBN wholesale services.

1. Background

1.1. Authority to issue a disclosure direction

The ACCC may issue a direction to a carrier or carriage service provider under section 151BUC of the CCA requiring that carrier or carriage service provider to provide periodic reports or extracts from reports prepared in accordance with the record-keeping rules.

In order to issue a disclosure direction, the ACCC must be satisfied that the disclosure of each report in a series or particular extracts from each report would be likely to:

- promote competition in markets for listed carriage services, or
- facilitate the operation of certain statutory provisions, including Part XIB and Part XIC of the CCA.¹

In deciding whether to issue a disclosure direction, the ACCC must have regard to the legitimate commercial interests of the carrier or carriage service provider that will provide the report and such other matters as the Commission considers relevant.²

Before issuing a disclosure direction, the ACCC must invite the carrier or carriage service provider concerned to make a submission on a draft of the disclosure direction, and consider any submission made by it within the time limit.³

The disclosure direction may require the carrier or carriage service provider concerned to make copies of each of those reports or extracts available for inspection and purchase by the public.⁴

1.2. 2018 NBN SIO RKR Disclosure Direction consultation

In June 2018, the ACCC sought comment from NBN Co regarding a proposal to vary the NBN SIO RKR Disclosure Direction.

The proposed amendments to the Disclosure Direction removed references to specific Network Access Services (for example, FTTP, FTTB and FTTN) and replaced them with a more general collective reference. The effect of this would be to include any new Network Access Services in the reporting requirements as soon as they were introduced and without requiring a further variation.

The response to this consultation and the ACCC's views regarding this matter are set out in Section 2 below.

¹ CCA s.151BUC(2)

² *ibid* s.151BUC(5)

³ *ibid* s.151BUC(6)

⁴ *ibid* s.151BUC(2)

2. Amendment to NBN SIO RKR Disclosure Direction

2.1. Overview

The information to be included in the NBN Wholesale Market Indicators Report is extracted from the confidential reports that NBN Co provides to the ACCC under the NBN SIO RKR. In broad terms, the revised NBN Wholesale Market Indicators Report will provide a count of NBN access services by:

- network access service technology
- state and territory
- each listed NBN Point of Interconnection
- contracted speed tier
- traffic class
- region, and
- selected NBN access seeker (where it meets the one per cent market share threshold).

The report also includes information on the aggregate contracted capacity across all NBN CVCs and on a POI by POI basis at the end of each quarter. The report also includes the number of NBN access seekers contracted to acquire CVC at NBN POIs.

Further details about the contents of each of the tables are provided in Section 3 below.

2.2. Requirements when issuing a disclosure direction

The ACCC may issue a disclosure direction where it is satisfied that disclosure of the resulting report would be likely to promote competition in the market for listed carriage services or facilitate the operation of one of the statutory regimes identified in sub-section 151BUC(2) of the CCA.

The ACCC is of the view that disclosure of the information in the NBN Wholesale Market Indicators Report would be likely to:

- promote competition in markets for listed carriage services supplied over the NBN
- promote competition in upstream and downstream markets related to the NBN, and
- facilitate the operation of Part XIB and Part XIC of the CCA as those Parts apply to NBN access services.

2.3. Changes to the Disclosure Direction

In most cases, the existing Disclosure Direction refers collectively to the various types of access technologies employed by NBN Co under the multi-technology mix as 'Network Access Services'. This imposes an obligation on NBN Co to report on all of its existing services and to automatically incorporate data on any new services as they become available.⁵

⁵ The Disclose Direction defines Network Access Service to mean each of the Existing Access Services and New Network Access Services included in the report NBN Co provides to the ACCC pursuant to the NBN SIO RKR in response of the relevant calendar quarter.

However, under the current Disclosure Direction Table 8 specifies the reporting of network access services by type, namely FTTP, FTTN, FTTB and HFC, and therefore does not make immediate provision for the reporting of new services, such as FTTC.

The ACCC's amendment to the Disclosure Direction changes the reporting requirement in Table 8 to make it consistent with the collective manner in which network access services are reported on elsewhere in the *NBN Wholesale Market Indicators Report*.

Specifically, it replaces the specific reference to each access service with the term 'Network Access Services' to facilitate the reporting of any new network access services as follows:

Table 8 Count of AVCs, sum of contracted CVC capacity and count of NBN Access Seeker Groups by Listed POI

This table is to provide as at the end of the calendar quarter the count of AVCs and sum of contracted CVC capacity by traffic class across ~~the specified~~all Network Access Services for each Listed POI. This table will also include the count of NBN Access Seeker Groups with contracted CVC capacity at each Listed POI.

Specifically, for each Listed POI, the table will include the following information:

1. the state or territory in which the Listed POI is located;
2. the metropolitan/regional designation of the Listed POI based upon the designation that is given to the POI in the document titled "Listed Points of Interconnection – NBN Corporation", published by the ACCC on 2 November 2012;
3. count of TC-1 AVCs for ~~FTTP, FTTN, FTTB and HFC~~ Network Access Services (not including the Wireless access service)
4. count of TC-1 AVCs for the Wireless access service
5. count of TC-2 AVCs for ~~FTTP, FTTN, FTTB and HFC~~ Network Access Services (not including the Wireless access service)
6. count of TC-2 AVCs for the Wireless access service
7. count of TC-4 AVCs for ~~FTTP, FTTN, FTTB and HFC~~ Network Access Services (not including the Wireless access service)
8. count of TC-4 AVCs for the Wireless access service
9. sum of contracted TC-1 CVC capacity
10. sum of contracted TC-2 CVC capacity
11. sum of contracted TC-4 CVC capacity
12. count of NBN Access Seeker Groups with contracted CVC capacity at the Listed POI

AVCs supplied on a Satellite Access Service are not to be reported in this table. An NBN Access Seeker Group with contracted CVC capacity on a Satellite Access Service only is not to be included in the count of NBN Access Seeker Groups with contracted CVC capacity at a Listed POI.

The ACCC consulted on changes to the Disclosure Direction with NBN Co during July 2018.

In its submission, NBN Co noted that it had reviewed the proposed amendments and did not have any comments to provide.

2.4. Promotion of competition

The ACCC considers that publishing the report will improve the availability of reliable market information and allow market participants to make better and more informed decisions. The ACCC considers that the changes will promote competition in the following ways.

- Publishing data by state and territory will improve transparency, provide greater detail on the status of the NBN rollout in particular geographic areas and improve public understanding of NBN product provisioning.
- Reducing the market share threshold to identify more NBN access seeker groups will promote competition through increased transparency as to the level of competition developing on the NBN.
- Publishing selected AVC and CVC data for each of the 121 POIs will further improve the range of information regarding NBN markets and therefore improve the ability of service providers to deliver innovative products and improve economic efficiency.

Publishing this additional information is likely to reduce information asymmetries that would otherwise exist between NBN access seekers, those considering entry as an NBN access seeker and NBN retail service providers and application service providers, amongst others, in respect of NBN access markets.

Such improvements in transparency allow NBN market participants to compete efficiently on their respective merits as service providers on the NBN, rather than on the basis of some having access to richer or timelier market information.

2.5. Facilitate the operation of Parts XIB and XIC of the CCA

The ACCC is satisfied that publishing the report will be likely to facilitate the operation of Parts XIB and XIC of the CCA.

The ACCC considers that the report will facilitate the operation of Part XIB of the CCA by making available detailed market information that will assist parties should they have any concerns relating to the roll out of the NBN and the potential for anti-competitive conduct. The report will provide stakeholders with a better opportunity to assess whether the market conduct that they are concerned about may be having a substantial effect on emerging market outcomes.

The ACCC considers that the report will also facilitate commercial negotiation between NBN Co and NBN access seekers, which is the principal means envisaged by Part XIC to establish the terms of supply of NBN access services. The report will, for example, provide visibility on the extent to which a range of NBN access seekers have secured access to different types of NBN access services. This will likely provide NBN access seekers with greater confidence to agree to NBN access arrangements, or alternatively pursue negotiations with NBN Co for alternative access arrangements where they consider that efficient market outcomes are not emerging.

Publication of the report would also facilitate the operation of Part XIC by making important market information that the ACCC would likely rely upon in making and explaining its decisions under this Part available to interested parties. This will in turn lead to more informed submissions to ACCC regulatory processes and ensure that the regulatory regime is appropriate and promotes competitive market outcomes.

The requirement to publish information on a POI by POI basis will further improve the consideration of Part XIB and Part XIC issues by stakeholders.

2.6. Legitimate commercial interests

In deciding to vary the Disclosure Direction to NBN Co the ACCC had regard to the legitimate commercial interests of NBN Co and NBN access seekers and has formed the view that doing so would not harm those interests.⁶

The ACCC notes that the current Disclosure Direction has been in force since March 2016 and that the ACCC has now published eleven NBN Wholesale Market Indicators Reports. The reports are widely accepted and have been the subject of regular media commentary.

The ACCC has not received any complaints regarding adverse impacts on commercial interests from publication of the report.

⁶ Ibid s.151BUC(5)

3. Explanation of Included Tables

3.1. NBN services in operation data

Table 1 reports services in operation data as at the end of the calendar quarter for each Network Access Service (access technology) by AVC traffic class on a national basis. It includes the count of the total number of AVCs and the sub-count of AVCs for each data transfer rate 'tier'.

Table 1 includes commercially available NBN access technologies. New technologies will be added to the table as these are rolled out.

3.2. CVC data

Table 2 provides the sum of contracted CVC capacity for each CVC traffic class by each state or territory at the end of the calendar quarter.

3.3. NBN access seeker groups at POI data

Table 3 provides a count of Listed POIs that have a specified number of NBN access seeker groups with contracted CVC capacity at the POI, and the same count relating to non-Listed POIs at the end of the calendar quarter.

For example, Table 3 will state, for each type of POI, the number of POIs at which no NBN access seekers have contracted to acquire CVC capacity, the number with one NBN access seeker group that has contracted capacity, and so on, until the maximum number of NBN access seeker groups that have contracted to acquire CVC capacity at a single POI is reached.

Acquiring CVC capacity at a POI is an essential pre-condition for an NBN access seeker to supply services from a POI. Hence Table 3 will give an indication of the breadth and depth of the NBN access seeker footprint across the NBN.

3.4. Access seeker services in operation data

Tables 4, 5, 6 and 7 provide a count of TC-4 AVC services acquired by NBN access seekers with greater than one percent of the TC-4 services in operation relevant to each Network Access Service type at the end of the calendar quarter. The services of all other NBN access seekers will be aggregated under the 'Other access seekers' line item.

Table 4 provides the count of TC-4 AVCs by NBN access seeker group for each relevant Network Access Service.

Table 5 provides the count of TC-4 AVCs on a national basis by NBN access seeker group and by contracted speed tier across all Network access services.

Table 6 provides the count of TC-4 AVCs by NBN access seeker group by state or territory.

Table 7 provides the count of TC-4 AVCs on a national basis by NBN access seeker group by metropolitan/outer metropolitan/regional/non-Listed POI designation.

For the purposes of Table 7, an AVC that is supplied as a Satellite Access Service will be designated as regional. For other Network Access Services, an AVC that is supplied on a Network Access Service that is connected to a Listed POI is to be designated as *metropolitan*, *outer metropolitan* or *regional* as per the table provided in "Listed Points of Interconnection – NBN Corporation", published by the ACCC on 2 November 2012.

Otherwise, the AVC is designated as *non-Listed POI* because a NBN Access Service supplied from a non-Listed POI could be supplied to a metropolitan, outer metropolitan or regional area, and hence cannot be geographically identified.

3.5. Point of interconnection services in operation data

Table 8 provides the count of AVCs by traffic class across all Network Access Services for each Listed POI at the end of the calendar quarter. This table also includes the sum of contracted CVC capacity for each traffic class and count of NBN access seeker groups with contracted CVC capacity at each POI.

Specifically, for each Listed POI, the table will include the following information:

- count of TC-1, TC-2 and TC-4 AVCs for Network Access Services excluding Wireless access services
- count of TC-1, TC-2 and TC-4 AVCs for the Wireless access service
- sum of contracted TC-1, TC-2 and TC-4 CVC capacity, and
- count of NBN access seeker groups with contracted CVC capacity at the POI.

AVCs supplied on a Satellite Access Service will not be reported in Table 8 and Satellite-only NBN access seeker groups will not be reported in the count of NBN access seeker groups with contracted CVC capacity.