

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACCC Consultation Paper

**Dark Fibre and NBN
Wholesale Aggregation
Proposed Record Keeping
Rules**

Public Version

March 2019

EXECUTIVE SUMMARY

1. This consultation seeks to address two recommendations from the ACCC's Communication Sector Market Study final report. In particular, to scope further information on dark fibre and NBN aggregation services and to establish whether any regulatory intervention is required.
2. First, it is important to note that the market for transmission services to NBN POIs have been assessed as being competitive by the ACCC. That is, there is sufficient competitive pressure and sufficient number of suppliers to ensure the competitive and efficient supply of wholesale transmission services.
3. RKR's present a material compliance cost on impacted firms and as such, should only be imposed where the benefits outweigh the costs. In the context of the supply of services in a competitive market, it would be difficult to demonstrate such an outcome.
4. As such, Optus does not consider there is a case for the introduction of the proposed Record Keeping Rules (RKR's).

Dark Fibre

5. Dark fibre services refer to passive fibre cable assets that can be used to provide services through both the addition of active network elements and in some cases further network augmentation. Optus agrees that this definition is appropriate.
6. Optus currently does not offer this service, **[CiC]** As such, there are no reasons for Optus to be included in the RKR. Should Optus be included, Optus would complete nil returns.

NBN Wholesale NBN Aggregation

7. NBN aggregation services describe the wholesale supply of a group of services that would otherwise be purchased individually for the supply of NBN services – in particular, NBN access, transmission and potentially other value add services.
8. Optus currently offers NBN aggregation services as part of its wholesale business. This is a customised solution aggregating the NBN last mile access service and Optus transmission services.
9. Optus has provided relevant market information to the ACCC upon request in relation to services we provide to NBN POIs. It is not clear to Optus that there would be sufficient incremental benefit from moving to a formal RKR to collect much the same information.
10. Optus is concerned that the structure of the proposed NBN wholesale aggregation RKR would impose undue compliance costs without offsetting benefits. As such, Optus does not support the proposed RKR.

DARK FIBRE

11. The Market Study considered there was limited competition in the supply of dark fibre services, including to NBN POIs, with only two active larger suppliers and a small number of other providers supplying more niche services in metropolitan areas.¹
12. At the time, respondents to the ACCC's market survey also did not raise any concerns in relation to the price and non-price terms and conditions. Neither of the two large active suppliers of dark fibre services were Telstra or Optus, both of which also do not offer commercial services in this market.² Regardless, the proposed RKR's intend to apply to seven service providers.
13. The proposed RKR defines Dark Fibre as:

An unlit strand of optical fibre that is terminated at each end on an Optical Distribution Frame (ODF), located at the Service Provider's Point of Interconnect (POIs).
14. Optus agrees that this is the appropriate definition of Dark Fibre. We can also confirm that Optus does not offer this service. **[CiC]** The nearest equivalent (or potential) service offered between the two points would be an active transmission service. This is not a dark fibre service.
15. It is therefore unclear what value the completion of an RKR obligation with zero information on a quarterly basis will provide. Optus submits that the Dark Fibre RKR should not apply to Optus.

Specifics of the draft RKR's

16. While Optus does not consider there is a need for an RKR for dark fibre services, we provide the following comments on the implementation of the proposed RKR's below.

Parties subject to the proposed RKR's

17. The RKR's should only apply to service providers who provide commercial services. The inclusion of service providers in an RKR who do not offer dark fibre services creates unnecessary regulatory burden.
18. In the event that this changes the ACCC retains the discretion to amend the list of parties subject to the RKR.

Proposed frequency of RKR returns

19. The proposed frequency for the collection of quarterly supply information seems too frequent given the nature of dark fibre; which is dependent on the excess supply of fibre strands on new fibre network deployments or fibre installations between two NBN POIs.
20. A submission due date of two months following the reporting period seems sufficient on an ongoing basis. However, it would be more reasonable that the RKR reporting period

¹ ACCC, 2018, Communications Sector Market Study, Final Report, April, p.63

² ACCC, 2018, Communications Sector Market Study, Final Report, April, p.68

be reduced to an annual requirement. The information collected is unlikely to change significantly on a quarterly basis.

Information to be collected in the proposed RKR

21. Optus currently does not offer dark fibre services. Therefore we are unable to provide the information under Schedule C or Schedule D in the draft RKR. Similarly there does not exist a wholesale list price for dark fibre.
22. However for active suppliers of dark fibre services, while limited, this may provide the ACCC with insight to demonstrate the size of the dark fibre market in Australia.

NBN WHOLESALE AGGREGATION

23. The ACCC has previously acknowledged that “Ultimately, service providers will not have a choice and will have to acquire NBN wholesale aggregation services if they do not have the scale for direct connection.”³ However, it is Optus’ experience that wholesale customers often continue to operate under a hybrid model and acquire NBN wholesale aggregation services even when they have reached the scale for direct connection.
24. There is a competitive market for NBN aggregation services in Australia, with the proposed RKR to apply to six service providers. However, Optus is concerned the proposed RKR do not necessarily reflect the different service operator models available in the market.
25. **[CiC]**
26. The proposed RKR defines NBN Wholesale Aggregation Services as:

NBN wholesale aggregation services involve the supply by a service provider of NBN wholesale access services in conjunction with a service provider’s wholesale transmission services. Other service provider wholesale services such as voice, video and internet interconnection services may be included.
27. Optus offers NBN wholesale aggregation services in the form of its Residential Broadband over NBN (RBBonNBN) product.
28. **[CiC]**
29. **[CiC]**
30. **[CiC]**
31. Optus’ wholesale customers are able to have their RBBonNBN service customised to meet their needs, **[CiC]**
32. **[CiC]**
33. **[CiC]**
34. **[CiC]**

Specifics of the draft RKR

35. While Optus does not consider there is a need for an RKR for NBN wholesale aggregation services, we provide the following comments on the implementation of the proposed RKR below.

³ ACCC, 2017, Communications Sector Market Study, Draft Report, October, p.80

Parties subject to the proposed RKR

36. The proposed RKR is intended to apply to eight service providers, this is despite the NBN Co website listing 18 wholesale providers, of which 12 are listed as offering both wholesale and backhaul services.⁴
37. It is not clear why the ACCC should only seek information from a limited set of providers. Moreover, Optus queries how the existence of 18 wholesale providers indicates a lack of competition – sufficient to warrant the imposition of an RKR.

Proposed frequency of RKR returns

38. A submission due date of two months following the reporting period seems sufficient on an ongoing basis. However, it would be more reasonable that the RKR adopt an annual reporting period.
39. An annual reporting period would materially decrease the compliance costs associated with the proposed RKR. Optus is concerned that the proposed nature of information, combined with the frequency of reporting, would require Optus to divert resources away from its wholesale customers and towards regulatory compliance.

Information to be collected in the proposed RKR

40. Optus does not consider it is necessary to provide information on the prices for retail plans across the various speeds, or the amount of CVC capacity contracted monthly for its own retail plans.
41. The ACCC can obtain information on NBN plans through the public websites of all the RSPs. There is no need to obtain this data through the use of RKR.
42. Data on the amount of ordered CVC is collected through the NBN RKR already provided to the ACCC. There is no reason why this information is required to be provided twice. We also note that NBN Co is best placed to provide this information as they are the carrier who is providing the service.
43. **[CiC]**
44. **[CiC]**
45. Optus submits that the inclusion of retail information within an RKR that relates to the collection of information on NBN wholesale aggregation service is not warranted. This is especially the case given this information is already supplied to the ACCC by NBN Co. Further, NBN Co is clearly best placed to supply this information as it is the access provider. It is not clear whether it is appropriate for access seekers to be subject to RKR for a service for which they are not regulated or capable of supplying themselves.
46. Optus similarly questions the format of Schedule B. Given the bespoke nature of wholesale aggregation agreements, it is not clear that it would be possible or practical to supply information in the suggested format. **[CiC]**
47. As noted above, Optus' wholesale customers acquire NBN wholesale aggregation services on a customised basis **[CiC]**

⁴ NBN Co, Wholesale providers, <https://www.nbnco.com.au/sell-nbn-services/wholesale-providers>

48. [CiC]