



TELSTRA CORPORATION LIMITED

Telstra Submission responding to the ACCC consultation on further enhancements to the Broadband Speed Claims – Industry Guidance

28 August 2020



EXECUTIVE SUMMARY

Telstra welcomes the opportunity to provide this response to the ACCC's request for information on proposed enhancements to the Broadband Speed Claims – Industry Guidance, following NBN Co recently launching three new wholesale broadband products with download speeds in excess of 100 Mbps (>100 Mbps Services).

Telstra is committed to providing its customers with clear information to ensure they can make informed choices about their broadband service.

Telstra's responses to the ACCC's questions are provided below, along with some additional feedback where appropriate.



01 Where wholesale product specifications give a range of speeds and burst speeds

1) Do RSPs plan to market >100 Services uniformly regardless of underlying access technology?

Currently, Telstra is planning to sell the >100 Mbps services across all available NBN Co access technologies, but due to the large variance in performance of the products across the technology types, the >100 Mbps services will not be advertised uniformly. This mitigates the additional risk under consumer law presented by the complexity of the products and the associated disclosures required to be given to consumers.

2) Are there any issues with specifying that RSPs should utilise 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?

Telstra is comfortable with the Guidance requiring RSPs to utilise the lowest end of a range of off-peak speeds provided by a wholesale provider when relying on that information for the advertising of typical off-peak speeds. Utilising the lowest end of a range of speeds in advertising typical off-peak speeds is most appropriate as it ensures a realistic, clear and consistent expectation is set by all RSPs for consumers.

3) Can the meaning of burst speeds be readily conveyed to consumers in marketing material?

The meaning of burst speeds cannot be readily conveyed in marketing material. Burst speeds are not representative of a typical experience a customer can expect, are short, infrequent and decrease in frequency the more often a service is used. The use of burst speeds in marketing material will most likely lead to confusion and has the potential to mislead customers.

4) Do you have any comments on the proposal that RSPs clarify off peak speed expectations for particular consumers where they differ from what is described in retail marketing?

Telstra is concerned with the ACCC's drafting and the introduction of clause 3.13 in the Guidance. There is potential for confusion and regulatory overlap with the ACMA's Telecommunications Service Provider (NBN Service Migration) Determination 2018 which already places similar obligations on RSPs. The Guidance should simply refer to the ACMA Determination to address RSPs needing to clarify off-peak speed expectations and not attempt to set additional obligations, which may become misaligned with the ACMA's Service Migration Determination over time. We also note this principle is already covered by clause 3.40 of the existing Guidance.

02 Promoting online gaming applications

5) Are there any barriers to RSPs provisioning their networks to ensure a high quality gaming experience?

A high quality gaming experience can be defined by multiple attributes of the broadband connection including connection stability, bandwidth, latency, packet loss, jitter and/or a Mean Opinion Score (MOS) developed for gaming experience. The distribution of performance over time for each of those attributes is also important. The metrics should relate to performance in the context of the actual gaming experience (playing the game) and not relate to the narrow experience of one minor aspect of gaming, such as the downloading of updates.



There are a number of barriers that need to be suitably addressed to ensure a customer has a high quality gaming experience – some are within the control of RSPs, while others are beyond the control of RSPs.

Factors outside the control of RSPs include:

- Potential for NBN Co to impact latency or speed reliability which may result in a diminished gaming experience.
- Connectivity to gaming networks, i.e. a small RSP may not be able to "directly" connect to a gaming network if their peering policy determines a minimum network size for direct connectivity.
- The configuration of the gaming hardware and servers.

Nonetheless, it is still possible for RSPs to make improvements to their network that deliver improved experience for gaming applications. This can be done two ways: by providing a higher performing product compared to a "standard" product offered by the same RSP, which could be offered as an add on to the standard product; or as a distinct product which is of a higher quality relative to performance of products offered by other RSPs. In either case it is important that demonstrably better performance is achieved. So, if a differential network setting is applied for a gaming product there must be measurable improvement compared to alternative offers from the same RSP.

If a RSP promotes a service as being suitable for a high quality gaming experience, the RSP should be able to substantiate the specific network or end-to-end quality metrics on which the claim is based. For example, in the case of a product which a RSP states is optimised for low latency and therefore suitable for a high quality gaming experience, the RSP should base this on data comparing the typical latency of this service against non-gaming services. In making general statements, like "a network built for gamers", this measurement must be an "end to end" view, and not be selective or cherry picked to favour certain network paths, e.g. the latency measurements should not be limited to the path between an RSPs interconnect point and the gaming network, they should be typical of the path between a customer's gaming device and the gaming network to reflect the actual customer experience.

03 General disclaimers about limited geographic availability of certain broadband products and requirements for specific consumer equipment

6) Do you have any comments on our proposed changes to the Guidance in respect of principle 4?

Telstra agrees with the proposed changes to the Guidance in respect of principle 4. These changes will help customers to be better informed by all RSPs about factors known to affect service performance and the geographical limitations associated with NBN Co products.

04 Descriptive labels

7) Should the 'Premium' label be applied to >100 Mbps Services or should new labels be developed for >100 Mbps Services?

We consider that labels are not helpful and therefore not required. They are difficult to make meaningful and can create confusion for consumers. The relevant information for consumers is the speed information and differentiating features of a service, and not the label.

For example, the term "Premium" is vague and subjective and doesn't accurately describe the benefit of the product. These services already have product names, and another label is superfluous.

8) What would be the benefits and downsides to consumers from the development of new labels in addition to 'Premium' to apply to >100 Mbps Services?



We see no benefits in the development of new labels. The development of new labels would not assist consumers to understand product offerings.

We expect to see continued differentiation in the market as RSPs develop services which best meet their customer's needs. The development of new labels would require RSPs to use prescriptive labels and are unlikely to correctly characterise a service's differentiating features and the experience a consumer could expect. This will likely confuse consumers as the same label would need to be used for different services providing varying consumer experiences.

9) Is it appropriate to treat wholesale products that have the same download speeds, but different upload speeds, in the same way for the purpose to labels and typical busy period speed claims?

Having two products with the same name but different upload speeds highlights the limitations with the Guidance and the approach taken with using prescriptive labels. It is unknown what future wholesale products may be released to the market and their differentiating features. It is no longer practical to use prescriptive labels and an alternative approach is needed to ensure consumers are not confused.

Wholesale products with the same download but different upload speeds can be treated the same way for typical busy speed claims, as the download performance is consistent, regardless of the upload speed.

10) Do you have any other view on the proposed enhancements to the Guidance?

We have no other views to offer.