

TELSTRA CORPORATION LIMITED

Proposed NBN Wholesale Market Indicators Report

Response to Discussion Paper

21 August 2015

Executive summary

Telstra welcomes the opportunity to provide comments on the 'Proposed NBN Wholesale Market Indicators Report' Discussion Paper ('the Discussion Paper'), issued by the ACCC in July 2015.

The paper proposes to combine and disclose information relating to wholesale services on both Telstra's customer access network (CAN) and NBN's access networks (i.e. FTTN, FTTP etc) in a new quarterly report ('the Quarterly report'). This information would be drawn from reports provided in accordance with Telstra and NBN's obligations under various record keeping and reporting rules (RKR), namely the NBN Services in Operation Record Keeping and Reporting Rules (NBN Co SIO RKR) and the Telstra Customer Access Network Record Keeping and Reporting Rules (CAN RKR).

Two objectives for the proposed Quarterly report are identified in the Discussion Paper — the promotion of competition in the market for wholesale access services and facilitating the enhanced operation of Part XIB and XIC of the *Competition and Consumer Act 2010* (CCA). Reference is also made to including information on Telstra's CAN to enable outcome comparisons with the networks of NBN.

Telstra is generally supportive of information on the NBN and its rollout being made publically available. For example, improved visibility in areas such as end user demand by service attribute, network capacity, CVC demand and POI status would be useful for market participants and complement information on the NBN rollout being considered for publication under a proposed carrier licence condition on NBN. However, including CAN RKR information in the proposed Quarterly in order to compare that to NBN information, and publishing information on services in operation (SIO) by access seeker would create confusion for customers and would risk reducing competitive intensity.

In relation to the CAN RKR, Telstra is of the view that this should continue to be published in its current form and there is no value in trying to make comparisons and reconciliations with information from the NBN SIO RKR. For example:

- Telstra's CAN and NBN's networks have considerably different spatial constructs, with Telstra's CAN being based upon over 5000 exchange service areas (ESA's) while the NBN is based on Service Area Modules (SAM's). These are two different constructs which do not readily mesh, meaning there are limited bases for comparisons and/or reconciliations. Publishing the two datasets side-by-side would lead to misinterpretation and confusion.
- The migration of customers from Telstra's CAN to the NBN is already underway, and appears to be a complicating factor. Migration is occurring in a staggered fashion, on a SAM by SAM basis, and extends over an 18 month period for any given SAM. The inclusion of migration activity is likely to cloud any cross-network comparisons due to non-aligned timeframes and the possibility of voice and broadband services migrating separately (something which would double the apparent number of SIOs, where it occurs). On the other hand, the exclusion of migration activity would result in the reported data having substantive gaps. It is also the case that not all services will migrate (i.e. some end users may elect to go 'mobile only').
- Telstra's CAN is in the process of being wound down, and whatever limited value information from the CAN RKR has in terms of promoting competition in the market for NBN services or improving the stock of NBN market information this will clearly diminish over time.

There is nothing about the NBN policy, and the desire for more information about NBN rollout, that requires greater disclosure about CAN data.

In relation to the proposal to publish information on services in operation (SIO) by access seeker, Telstra is of the view that this information is confidential information of the relevant access seeker that is commercially sensitive in nature and we question the extent to which its publication could promote competition in the market for NBN services. While the Discussion Paper suggests that disclosure of access seeker information could reduce information asymmetries and lower barriers to entry, we believe the case for these benefits to arise is weak for the following reasons:

- Telstra retail and access seekers do not have any information on the quantity of services other market participants acquire from either Telstra or NBN, so there is clearly no information asymmetry which can be resolved in the interests of promoting competition.
- Given NBN has comprehensive non-discrimination obligations and is meant to provide uniform products it is difficult to see how the publication of access seeker information could reduce barriers to entry. There are no barriers of entry in the communications sector arising from a lack of intelligence on competitors' sales — indeed, if there were, this would be an issue for most sectors in the economy where such information is not readily available.
- Were information on SIOs by access seeker published, it would invariably be incorrectly interpreted as retail market share, when that would not be the case. The data would also be incomplete, noting that other non-Telstra and non-NBN access networks exist.
- The regulated reporting obligation places an asymmetric burden on those firms who have to report the data. Publishing the access seeker data would aggravate that asymmetry in regulation as the burden of having such information in the public domain would be asymmetric imposed on those who report or are reported on.

The publication of information on SIOs by access seeker could also have inefficient consequences. For example, quarter-to-quarter migration activity for specific access seekers could vary for one of several reasons including possible usage of a two-stage migration process, but such nuances would not be captured in the data which might then be misinterpreted. Further, the publication of access seeker data could encourage less competitive behavior, as it would allow Retail Service Providers (RSPs) to more closely monitor their competitors' activities.

Wholesale SIO data by access seeker is likely to be of little to no interest for customers because this is not the basis upon which services are made available to them or the basis upon which they make decisions. End-users are primarily interested in prices, service quality and service innovations and indeed RSP's readily provide information about their offerings in each of these areas to the market.

If, in time, evidence emerges that there is some impediment to competition in the NBN wholesale market then measures to address these could be contemplated. In the absence of any such evidence though, the case for ex-ante intervention of the form proposed is not clear and is only supported in the context of non identifiable, aggregated NBN SIO RKR information, capacity data and point of interconnect (POI) data.

Introduction

On 30 July 2015, the Australian Competition and Consumer Commission (ACCC) released a Discussion Paper seeking views from interested stakeholders on a proposed 'NBN Wholesale Market Indicators' report.

The proposed Quarterly Report would outline a range of information about the market for wholesale broadband services, as detailed in the next section, based on material drawn from reports provided by NBN Co and Telstra in accordance with their obligations under the NBN SIO RKR and CAN RKR, respectively. We also understand that the proposed Quarterly Report could complement information made available pursuant to a recently proposed carrier licence condition on NBN for the disclosure of NBN rollout information.¹

This submission sets out Telstra's views in response to the Discussion Paper.

Scope and objectives of the proposed Quarterly Report

The specific data which is being considered for inclusion in the Quarterly Report includes:

- NBN SIO counts by:
 - Technology, encompassing fibre-to-the premises (FTTP), fibre-to-the-node/basement (FTTN/B), wireless, satellite and in the future hybrid fibre coaxial (HFC);
 - Geographic region, including SIOs at the national level, nationally by region (metropolitan/regional) and at the state/territory level;
 - Traffic class, for national data;
 - Speed tier, i.e. 12/1, 25/5 etc noting that there is some variation in the availability of tiers by technology type; and
 - NBN access seeker, including on a national basis by technology and speed tier, and on a geographic basis such as a metro/regional basis or a state/territory basis provided the access seeker has at least 5% of the total number of SIOs for the relevant NBN market. If an access seeker does not meet this threshold they will be aggregated with other access seekers in a similar position for reporting purposes as 'other'.
- Telstra CAN SIO counts by:
 - Geographic region including SIOs at the national level and with a metropolitan/regional (ULLS band) breakdown; and
 - By access seeker, with groups having over 5% of total Telstra CAN access lines being identified and remaining services designated as 'other'.
- Capacity data (i.e. connectivity virtual circuit (CVC) data), comprising:
 - Total capacity by state/territory; and
 - Average utilisation of CVC in Mbps for contracted CVC capacity for each traffic class in peak periods.
- Point of interconnection (POI) data, including information on the number of active POIs (including interim POIs) and a count of the number of POIs by active NBN access seeker presence.

Telstra understands that the scope of proposed Quarterly Report does not require any variation of the existing Telstra CAN RKR, but there may be a need to alter the form of reported data depending on which proposals are implemented. Telstra notes, however, that in order to provide any different or additional information to the ACCC — including any aggregation of information that is currently provided — this would need to be clearly required by the Telstra CAN RKR, given the commercially sensitive nature of this information. Telstra considers that it is not able to voluntarily supply different or additional information to the ACCC, or provide this information in a different format. Any variation to the format of information reported would need to be specifically required under the Telstra CAN RKR.

¹ We note that the ACCC published its report on the proposed information disclosure carrier licence condition to the Department of Communications on 30 June 2015:
https://www.accc.gov.au/system/files/ACCC%20Report%20-%20Proposed%20information%20disclosure%20CLC%20%28May%202015%29_0.pdf

The Discussion Paper identifies two primary objectives for the proposed Quarterly Report — the promotion of competition in the NBN market (by improving the stock of NBN market information) and facilitating the operation of parts XIB and XIC of the *Competition and Consumer Act 2010*.

The ACCC also indicates that the inclusion of Telstra CAN data “would enable comparison with services in operation data by access seeker for the NBN wholesale access market ... and provide an indication of how the market structure for NBN access services compares to the structures that were observed for Telstra CAN access services” (Discussion Paper, p.7).

Comments

Telstra understands that the proposed Quarterly Report would be a compendium of information which is currently provided to the ACCC by NBN and Telstra under existing RKR's.

Telstra is generally supportive of information on the NBN and its rollout being made publically available. We agree with the ACCC, for example, that improved visibility in areas such as end user demand by service attribute, network capacity, CVC demand and POI status would be useful for market participants and complement other publically available market information.

We are concerned, however, that the scope of the proposed Quarterly Report appears to be broader than what is necessary to meet the stated objectives and may in fact be counter-productive to those objectives. The particular areas where we have concerns are:

- The inclusion of information from the Telstra CAN RKR; and
- The public disclosure of information on SIOs by access seeker.

Telstra also has comments in relation to the proposals to disclose capacity and point of interconnect (POI) data.

Inclusion of information from the Telstra CAN RKR

Given that the NBN is being progressively rolled out as a replacement local access network for the CAN, Telstra is of the view that the existing CAN RKR should logically be repealed at some point in the near future. Until this occurs, the reporting under the CAN RKR should continue as it is currently.

In particular, we believe there is limited value in trying to compare or collate information collected under the CAN RKR to that collected from the NBN SIO RKR. Indeed, to do this would be problematic and potentially confusing and inaccurate. The reasons for this are as follows:

- Reporting under the CAN RKR currently occurs at the exchange serving area (ESA) level whereas reporting under the NBN SIO RKR will occur at the serving area modules (SAM) level — these are different spatial constructs, and because ESA's do not readily map to SAM's there appears to be a very limited basis for making comparisons between data pertaining to Telstra's CAN and data pertaining to NBN.
- The migration of services from our CAN to NBN's network is already underway. Migration is a major complicating factor for the proposed Quarterly Report because it occurs on a SAM by SAM basis and extends over an 18 month period for any given SAM. If 'ready for service areas' are left out of the Quarterly Report the data itself will be incomplete but if 'ready for service areas' are left in then the resulting data will be inconsistent due to misaligned timeframes, the possibility of voice and broadband services migrating separately (something which would double the apparent number of SIOs, where it occurs) and the fact that some end users may elect to not migrate their service (i.e. they may elect to go 'mobile only'). The inconsistencies would be further accentuated by any transformations to the base data to facilitate CAN-NBN comparisons, as outlined above.
- There is no link between information from the CAN RKR, which is a legacy reporting obligation, and the promotion of competition in the NBN market or the stock of NBN market information. Indeed, information from the CAN RKR is likely to be of no interest or value to customers.

On this basis, Telstra submits that information from the CAN RKR should not be included in the proposed Quarterly Report. We anticipate that the limited interest in CAN RKR data would be reflected in very few downloads of the current CAN RKR report from the ACCC's website, something the ACCC is in a position to advise on.

Instead of focusing on the CAN, the proposed Quarterly Report should be focused on outcomes in the distinct NBN wholesale market alone. Such a focus would complement NBN's proposed information disclosure Carrier Licence Condition and other publicly available sources of information, and be consistent with Australia's current direction for telecommunications policy

Publication of SIOs by access seeker information

Telstra disagrees with proposal to publicly disclose information on SIOs by access seeker at the wholesale level. This would be an ex-ante intervention for which the case has not been made. While we recognise that this data is already provided to the ACCC on a confidential basis, we question the extent to which its publication could promote competition in the market for NBN services.

Information about the services access seekers acquire on any telecommunications network is typically highly sensitive and confidential in nature — the information in question is simply unknown to any market participants other than the access providers themselves. Access seekers will be able to determine the extent to which each other adopt build versus buy decisions, how those build versus buy decisions change over time, and the particular success or failure of strategies or campaigns. Similarly, the Migration Plan contains strict requirements about the way in which migration information relating to premises proposed to be connected to NBN Co's FTTP network can be used, accessed and disclosed.

The Discussion Paper suggests that disclosure of access seeker information could reduce information asymmetries and lower barriers to entry. For the following reasons the case for such benefits to be realised is weak:

- There is currently no information asymmetry to address. Telstra Retail does not have access to wholesale customers' market share information, and all industry players no doubt undertake their own market intelligence activities. Thus, it cannot be argued that the publication of information on access seeker identities would reduce information asymmetries and therefore promote competition. Further, as this requirement would also only impact on access seekers who have over 5% of Telstra's CAN access lines in a particular region, it would not affect all access seekers equally.
- As NBN has non-discrimination obligations and is meant to provide uniform products, it is difficult to see how the publication of access seeker information could reduce barriers to entry, as suggested in the Discussion Paper. There are no barriers of entry in the communications sector arising from a lack of intelligence on competitors' sales — indeed, if there were, this would be an issue for most sectors in the economy where such information isn't readily available.

We are also concerned that if information on access seekers and the services they acquire were published, this would inevitably be interpreted as being indicative of retail market shares despite being wholesale in nature and repeated emphasis of this point by the ACCC. Furthermore, as other non-Telstra and non-NBN access networks exist in the market (e.g. Optus HFC, providers in Greenfield areas etc) any data reported would by extension be incomplete. It is not clear how incomplete information promotes competition.

The publication of information on SIOs by access seeker could also have inefficient consequences. For example, quarter-to-quarter migration activity for specific access seekers could vary for one of several reasons including possible usage of a two-stage migration process, but such nuances would not be captured in the data which might then be misinterpreted. We also think that the publication of access seeker data could encourage less competitive behavior, as it would allow RSPs to more closely monitor their competitors' activities.

We also note that confidentiality provisions are attached to many of our wholesale supply contracts, and while Telstra would still need to disclose this information if it were required to be supplied under the Telstra CAN RKR, the disclosure of and publication of this information may not reflect the preferences of access seekers as a whole.

In addition to the points above, Telstra also questions the ACCC's statement that:

"The inclusion of data specific to NBN access seekers would provide an indicator of whether there could be impediments to the development of an effectively competitive market, which could be the case where the market for NBN wholesale access services was heavily concentrated" (p.5)

Whether or not the market for NBN wholesale access services is or becomes heavily concentrated is a matter for the ACCC, and as such we are comfortable with the ACCC receiving information about the identity of access seekers and the services they acquire as outlined above. However, even if the market for NBN wholesale access services is or became heavily concentrated it is difficult to see how broader publication of that information about access seekers and the services they acquire would be of any use to the market given NBN Co's non-discrimination obligations and provision of uniform products.

Based on the points above, Telstra submits that the proposed Quarterly Report should not include any information on SIOs by access seeker for either Telstra's CAN or NBN's network. The case for ex-ante reporting intervention has not been made and there are substantive questions about whether the publication of information about SIOs by access seeker would promote competition in the market for NBN wholesale access services. The information being proposed for disclosure is also likely to be of little to no interest for end users as wholesale market considerations are not the basis upon which services are available to them or the basis upon which they make decisions. It is our experience that end-users are primarily interested in prices, service quality and service innovations and we note RSP's already (and willingly) provide consumers with information about their offerings in each of these areas to the market.

Capacity data and POI data

Telstra notes that the Discussion Paper also outlines proposals to include the following capacity data and POI data in the proposed Quarterly Report:

- Total capacity by state/territory and by traffic class;
- Average utilisation of connectivity virtual circuit (CVC) in Mbps for contracted CVC for each traffic class in peak periods;
- Information on the number of active POIs (including interim POIs); and
- A count of the number of active POIs by active NBN access seeker presence.

The publication of capacity data would align with the objectives identified for the proposed Quarterly Report. In particular, capacity data and related trends will be relevant to the pricing of CVC. On this basis we support the inclusion of capacity data in the proposed Quarterly Report. Practically, we anticipate that 'contracted CVC' would be more straightforward to report than 'CVC utilised', so we support use of the former as an indicator of demand in the market. This would also be consistent with the approach to reporting on AVGC/VLAN in the BBM RKR.

In relation to the POI data proposed for inclusion in the Quarterly Report, Telstra notes:

- Information on active POIs is indeed relevant to the promotion of competition in the market for NBN services. This information, however, is already known to industry participants.
- Information on the number of active POIs by active NBN access seeker presence could also be relevant to the promotion of competition in the market for NBN services, and as no such data is currently available in the market it could be a useful inclusion in the proposed Quarterly Report.

Appendix 1: Response to Discussion Paper Questions

	Commission question	Telstra Response
1.	Are there other data collected by the ACCC through the RKR that the ACCC has not proposed to publish that stakeholders would find useful to be reflected in the reports? If so, what?	No.
2.	Do stakeholders have any concerns about proposed information to be disclosed? If so, what are these concerns and how could they potentially be addressed?	<p>Yes, Telstra has concerns about the disclosure of:</p> <ul style="list-style-type: none"> a) information from the Telstra CAN RKR; and b) SIOs by access seeker for both Telstra's CAN and NBN's access network. <p>Our concerns relating to each of the points above are discussed at length in the body of our submission. In brief, for point (a) they pertain to issues of limited comparability, incomplete data, limited relevancy and the commercially sensitive nature of this information to access seekers, whereas for (b) they pertain to limited rationale, the potential for misunderstanding and again limited relevancy. The concerns above would be best addressed by leaving data from Telstra's CAN RKR out the proposed Quarterly Report and focusing instead on outcomes in the market for NBN wholesale access services alone. There is nothing about the NBN policy, and the desire for more information about NBN rollout, that requires greater disclosure about CAN data.</p>
3.	Do stakeholders have any suggested changes to the proposed reporting templates?	Beyond the deletion of templates relating data from Telstra's CAN RKR and the removal of SIO information, we have no suggested changes to the proposed reporting templates.
4.	The ACCC proposes to report on access seekers by corporate group rather than on each individual access seeker that is part of a single corporate group.	Reporting access seekers by corporate group is appropriate, and this approach should be applied consistently (i.e. all access seekers should be grouped in

	Which access seekers should be grouped in this way?	this way).
5.	If the ACCC were to report one CVC figure, either contracted CVC or CVC utilised, which figure would provide the better indication of demand in the market?	Contracted CVC.
6.	If the ACCC were to report on access seekers by speed tier, should all speed tiers be reported separately or should some speed tiers be grouped? If speed tiers were grouped, into what groupings should speed tiers that are described in terms of a broad range (e.g., 25-50/5-10 or 25-100/5-40) be placed?	Telstra does not support the inclusion of access seeker information in the proposed Quarterly Report. If the ACCC were to publish access seeker specific information, then Telstra opposes the inclusion of speed tier by access seeker. This would accentuate the adverse outcomes associated with publishing market sensitive information as discussed above. Telstra sees little value in aggregated speed tier information and indeed, it could harm competition by revealing information about competitors' customers and how they are servicing them.