

| 7 May 2014



Mr Alex Elith

Director – Enforcement & Compliance
Communications Group
Australian Competition and Communications Commission
GPO Box 520
MELBOURNE VIC 3001

By email: Alex.Elith@accc.gov.au

Dear Mr Elith,

RE: ACCC's proposed broadband performance monitoring and reporting program

I am writing in response to your letter of 8 April 2014 seeking our views on the ACCC's draft Position Paper 'Broadband performance monitoring and reporting in the Australian context' (the draft Position Paper).

At the outset, Communications Alliance would like to reiterate the position that we are not persuaded that there is a need for the introduction of a broadband performance monitoring and reporting program as envisaged by the ACCC. It continues to be our view that there has, to date, been no demonstration of market failure or identification of consumer detriment that needs to be addressed through the development of such a program.

'Potential' for Consumer Detriment

The draft Position Paper contains a general theme that there is a greater risk or potential for consumer detriment as the National Broadband Network is rolled out. The draft Position Paper states that:

"...with higher potential service performance comes a greater risk of consumer detriment if expectations are created and not met..."

...there is a lack of independent and reliable information on broadband service performance...this leads to consumer harm by increasing product search and transactional costs... the potential for this harm will become particularly relevant as the NBN rollout progresses..."

...the proposed program would respond to this potential harm..."

The draft Position Paper does not provide any evidence that such consumer detriment is actually occurring. Communications Alliance contends that the 'potential' or anticipation of consumer detriment is not a legitimate reason to outlay scarce public funding as well as impose additional cost on business.

TIO Complaints Steady

Statistics obtained from the Telecommunications Industry Ombudsman also support the view that there is no critical need to implement a broadband performance and monitoring program. As is evidenced in the table below, complaints relating to slow data speed remain steady, against the backdrop of a steadily increasing volume of total broadband connections in Australia. It would be expected that, if there was a problem, the complaints would be increasing on a regular basis. The most recent figures published by the ACMA indicate there was a total of 32 million internet subscribers in Australia as at June 2013. As a crude ratio, a monthly total of, for example, 500 complaints per month to the TIO (i.e. 6000 per annum) would indicate that fewer than 0.0002% of internet subscribers were troubled enough by slow broadband speeds to complain to the TIO in a given 12 month period.

TIO New Monthly Complaint Issues - Slow Data Speed												
Source: TIO Industry Reports as provided to Communications Alliance												
Year	2013											2014
TIO Reporting Month	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
TIO No of New Complaint Issues - Slow Data Speed (Internet)	442	409	459	581	514	592	460	390	455	408	290	419

Government's De-Regulatory Agenda

Furthermore, as previously noted, the introduction of new compliance burdens on industry contradicts the current Government's de-regulatory agenda. As noted in comments by the Hon. Josh Frydenberg MP, Parliamentary Secretary to the Prime Minister:

*"This scandalous culture of piling on new regulations without assessing the consequences for productivity, and the costs involved, must now come to an end. We need a new approach. Questions must be asked first before new regulations are passed. What is their purpose? What is their cost? What is their impact on productivity? What is their impact on new entrants? And what is their effectiveness in managing risk? Only then, when it is absolutely necessary and with no sensible alternatives available, should we proceed to regulate. We need a new conception of acceptable risk and we need to much better understand the cumulative impact of regulation on business decision making."*¹

Cost of the Broadband Monitoring Program

Communications Alliance has previously raised the issue of the potential cost of implementing the broadband monitoring and performance program:

¹ Frydenberg, J., 'The Abbott Government's Deregulation Agenda: Priorities and Strategies, 28 October, 2013, <http://www.joshfrydenberg.com.au/guest/SpeechesDetails.aspx?id=225>

It would also be useful to understand the costs likely to be incurred by the ACCC to develop the program, as well as the likely ongoing impact on the budget to maintain such a program. Given the lack of evidence the ACCC has provided in justifying the need for this program, it is not clear to us that these costs would be outweighed by any net benefit in a Regulatory Impact Statement.²

The ACCC remains silent with regard to the estimated size of the monitoring sample and associated cost of implementing the program within the draft Position Paper. Communications Alliance believes that these estimated costs should, in the interests of transparency, be disclosed.

Alternatives to the Broadband Monitoring Program

Communications Alliance also notes that the Minister for Communications, the Hon. Malcolm Turnbull MP recently announced a tool to measure broadband availability and quality on the 'My Broadband' site³. While this does not measure individual RSP performance, it provides another way in which consumers can access information about broadband services.

Communications Alliance contends that this, or other alternatives, should be given consideration prior to commencing the proposed program.

Usefulness for RSPs

The draft Position Paper states that:

"...RSPs and access network operators would gain a broad insight through the program into how their own investment and operational decisions translate into end-user service quality, which will become increasingly valuable..."

Communications Alliance believes it is unlikely that the proposed performance monitoring program will provide RSPs with additional insight relating to investment decisions. During the development of a business case for capital spend, businesses typically develop performance measures to assess the success, or otherwise, of investment and operational decisions. Any use of an external broadband monitoring tool is likely to be ancillary to a business' own assessment of its capital expenditure decisions.

Rollout of the NBN

As stated in previous submissions, the consideration of the broadband performance monitoring program is premature, given the rollout of the National Broadband Network (NBN). Of particular note is the recent NBN Discussion Paper, the contents of which were reported in Communications Day on 15 April 2014:

"NBN Co plans to duplicate its FTTH product set for its FTTN/B network but will not guarantee minimum download speeds above 25 Mbps or upload speeds above 1 Mbps, CommsDay can reveal. According to a discussion paper intended for

² Ltr from Communications Alliance to ACCC dated 19 March 2014

³ <https://www.mybroadband.communications.gov.au/>

circulation to its product development forum, NBN Co will offer similar speed tiers across both FTTH and FTTN/B networks, with the caveat that the latter will offer “up to” speed tiers at the 50 and 100Mbps download mark and 5/10/20 and 40 Mbps upload mark. The FTTH platform offers these as minimum speed tiers, subject to the limitations of contended backhaul.

... NBN Co also seeks to waive responsibility for individual line speed evaluation on its FTTN network. It says “selecting the correct speed tier will be the responsibility of the end user and the provider.” “NBN Co does not intend to prevent end users and/or providers from ordering the ‘Up To 100Mbps’ speed tier for a service that would typically experience speeds of less than 50 Mbps,” NBN Co says in the paper. NBN Co says it considered waiving speed tiers for its FTTN product set but, on balance, wants to retain them so retailers can charge a premium for higher speed services.”⁴

The proposal for NBN Co. to introduce new speed tiers, as well as the introduction of the term 'up to..' in relation to speed is, in our view, another valid reason that the introduction of such a program is premature. Until these issues have been settled, it is not possible to consider implementing a comparative broadband monitoring program.

Sample Size and Selection

The transition to the NBN – which is now planned to include a high proportion of FTTN/B services - also has the potential to impact the reliability of the sampling proposed in the draft Position Paper. As customers transition to FTTN-based services, there is potential for disparity in broadband performance based on whether customers are receiving legacy services from the exchange or VDSL2 services from the node.

Further, the supply of services from the exchange and the node will necessarily co-exist in node-served areas – most likely for at least an 18 month period - across the country as the NBN is rolled out over many years. The 'shaping' or power management technology that will need to be used to enable exchange-based and node-based services to co-exist during the transitional period (without excessively interfering with one another) will, nonetheless, affect the performance achieved in that area until it transitions to node-only architecture. Therefore the 'robustness and reliability' of the data being reported will be affected, depending on the stage of NBN roll-out that has been reached in specific areas.

Additionally, Communications Alliance notes that the draft Position Paper states that 'at least the top five RSPs by subscribers within each geographic segment...' will be selected. This limitation will prevent 'full consumer engagement in the competitive process'. Rather, it will have the potential to either advantage or disadvantage large RSPs while not capturing smaller RSPs who are just as capable of providing an excellent service or creating expectations that are 'not met'.

Thank you for the opportunity to comment on the draft Position Paper. If you have any questions relating to the comments provided, please do not hesitate to contact me.

⁴ Communications Day, 15 April 2014

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Stanton', written in a cursive style.

John Stanton
Chief Executive Officer