COMMUNICATIONS ALLIANCE LTD

ACCC Review of Measuring Broadband Australia

COMMUNICATIONS ALLIANCE SUBMISSION

November 2020

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INTRODUCTION

Communications Alliance***** welcomes the opportunity to provide this submission in response to the ACCC's review of the Measuring Broadband Australia (MBA) program.

The end of the program's initially proposed window aligns well with major changes to the NBN roll-out, as the volume roll-out is complete. The data from the program thus far has established that, overall, Australia's major ISPs are delivering strongly against their advertised broadband speed claims and against maximum plan speeds. It remains a concern for ISPs, however, that the data do not sufficiently account for some variables that are outside the control of service providers.

Throughout the program, we have expressed concerns about the misalignment between the language used in publication of the performance report and the ACCC's expectations of how speeds should be advertised. This has caused confusion for the news media and for consumers.

Additionally, Industry views that the program has been extremely opaque, which is particularly problematic in light of its significant industry-funded cost, and we recommend some changes to increase transparency. It has been difficult to understand throughout the program to date, exactly how many participants have been recruited to the program – other than that the numbers are much lower than originally forecast – this, inevitably, raises questions about the sample size and its impact on the results. We note the ACCC's claim in the consultation paper that it deduced during the program that its original sample-size targets did not necessarily need to be met.

This review is an opportune time to address issues with the operation of the current program.

The possible expansion of the program, discussed in the consultation paper, is a question that should be considered separately. In industry's view, the proposed expansions are either not necessary (e.g. re mobile broadband speeds) or in other cases are technically infeasible, or would not provide clear or accurate information for consumers, and therefore are not an appropriate future course.

Our submission evaluates the performance of the current program, then addresses the future of the program by putting forward improvements that need to be made should it continue and responding to the proposed expansions.

Appendix A is a list of short responses to the questions raised in the consultation paper for reference, but needs to be read in conjunction with the body of our submission, which contains significantly more detail

Finally, Industry has diverse views on some of the questions raised in the consultation paper, and thus Communications Alliance cannot offer a consensus-based response to those. Where that is the case, we have noted it in this submission. We understand a number of our members will be providing individual submissions to the ACCC for its consideration.

We note the ACCC's signal that it does not intend to publish the submissions it receives as part of this consultation.

Communications Alliance intends to publish its submission and believes that the ACCC should – consistent with its avowed preference for regulatory transparency – publish all submissions other than those where confidentiality has been requested.

*NOTE: *nbn™ does not necessarily share all views outlined in this submission.*

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see http://www.commsalliance.com.au.

EVALUATION OF THE PROGRAM

The consultation paper provides an extensive review of the MBA program's performance.

While we do view the program has delivered some benefits, we consider that in some places the paper overstates these or neglects to mention some of the challenges. We have sought to offer additional insights on some of those issues.

Impacts

The stated aim of the MBA program is to: "assist consumers when choosing a retail service provider (RSP), build public confidence in the speed claims that retailers have been making, and to encourage the adoption of service quality as a further product dimension over which network operators and RSPs compete."[1]

The consultation paper claims that "this has supported increased competition in retail markets and has been a catalyst in driving greater market efficiency and investment."[2]

The paper also refers to the timeframe on the reduction in online network congestion, but this actually shows that the changes in bandwidth congestion happened before the commencement of the performance reports – casting doubt on the ACCC's claim.

It appears more likely that the improvements on the congestion front were attributable to the release of Industry Guidance, ongoing work by ISPs and CVC pricing changes that happened in the same timeframe.

The consultation paper asserts that: "consumers now have more confidence to purchase higher speed tier plans"[3] – and points to the increased purchase of higher speed tiers as evidence of this. The trend toward higher speed plans is likely attributable to multiple factors, including the effects of COVID-19 on users' changing broadband needs, along with the fact that the higher speed plans were not as widely available at more attractive price points until around May of 2020.

The ACCC does not appear to have any consumer interview or survey data to test the actual public awareness of the program. Such data would be useful if the ACCC intends to continue measuring the program's delivery of information to consumers as a key metric.

Similar scepticism can reasonably be cast on the claim in the consultation paper that the MBA program has generated a reduction in consumer complaints about broadband speeds. Other factors are in play – the broadband market is highly competitive and ISPs have been modifying and enhancing their offerings to win new customers and to improve the user experience of existing customers. The MBA may have contributed to this outcome, but cannot reasonably claim all the credit.[4]

The noted decrease in the number of impacted/'under-performing' lines showing up in the MBA results is also due in part to improvements in underlying NBN infrastructure.

Transparency on performance and budget

In industry's view there is a concerning lack of transparency on the performance of the program itself.

The problems that the ACCC reported due to increased demand during the COVID-19 pandemic (in which potential congestion affecting host servers showed up in the collected data but would not have been likely to have affected the end-user experience) were not, to

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[1] Consultation Paper, p5.
[2] Ibid., p5.
[3] Ibid., p9.
[4] Ibid., p24.

our knowledge, discussed with ISPs. Where this issue was mentioned in an industry briefing, it was in relation to an ACCC report that had already been finalised.

As mentioned in the introduction to this submission, the program review process should be transparent.

The program has delivered far fewer participants, white-boxes deployed and actual tests conducted than were deemed necessary and budgeted for at the outset of the program.

It would be reasonable to expect more detailed accounting of how the industry-levied funding has been spent by the ACCC and why the greatly reduced participation in and scale of the program itself has apparently not translated into reduced overall spending and the opportunity to return unused funds to industry.

The information in the consultation paper about the ACCC's changed expectations about the number of active devices/participants needed to generate reliable results is the first that industry has seen of this, despite numerous questions about sample sizes being put to the ACCC by industry during the course of the program to date.

The ACCC reporting has never appeared to involve more than 1,300 active devices and has often pertained to fewer than 1,100 devices. The program was scheduled to have more than 2,000 active white-boxes in its first year, on the way to reporting on a total of 4,000 devices by the current phase of the program.

It is unclear what will become of the large stock of purchased but unused white-boxes.

We also believe it would be appropriate for all non-confidential submissions to the review process to be published. The ACCC has not offered an explanation as to why it does not propose to do this.

IMPROVED INTEGRITY

There are different viewpoints within our membership as to whether the MBA program should be continued in something close to its present format and we therefore do not offer comment on that question.

If the program does continue, the following input may be useful.

Sample sizes

There are industry concerns the sample sizes, which we believe in many cases have been smaller than the 75 deemed as a necessary minimum for the program – and which is mandated for ISPs in the ACCC's Speed Claims Guidance.

As an illustration, below is a table of the RSPs featured in Report 10, NBN plans only. They mandate a minimum of 75 customers per plan to come to a typical busy speed.

Some of the RSPs being featured in the report might not even meet this criterion for a single plan if you combined all their volunteers.

Row Labels	100/20 Mbps	100/40 Mbps	12/1 Mbps	25/5 Mbps	250/25 Mbps	50/20 Mbps	Grand Total
Aussie Broadband	2	**78**		24	1	68	173
Dodo & iPrimus		16	2	6		31	55
Exetel		24	2	5		54	85
iiNet		59	9	8		**86**	162
MyRepublic		30				31	61
Optus		52		6		**87**	145
Telstra		66		23		**136**	225
TPG		60	17	19		**104**	200
Vodafone		42		3		42	87

Increased transparency

In addition to transparency issues already raised, industry would like to see more information on technical aspects of the program.

This could include:

- How many samples are taken for each white-box on the program – what are the number of measurements, how many deferred tests by robot & RSP, what hours of the day are measurements taken;

- Information on how the test chooses the server, and thus if the most appropriate server is being chosen;

- Information on who is providing the hosting/transit services; and

- Information on whether and how services that include 4G back-up solutions are excluded from the program.

Improved reporting

Industry has consistently pushed throughout the program for the ACCC reporting to be based on performance achieved in comparison to the speed claims published by ISPs.

This would provide more meaningful results for consumers, given that so much of the rhetoric about the MBA program has focused on the need for consumers to 'get what they are paying for'. It would also align with the ACCC's guidance to industry on broadband speed claims.

Reporting primarily on performance against maximum speed plans gives consumers a much less accurate picture of whether they are receiving performance and a user experience that aligns with what their service provider has promised them.

The reporting methodology and the inclusion of FTTN longlines (which often show up as 'under-performing' services, tends to hold some ISPs accountable for factors that are beyond their control. It also does not take account of the underlying hardware being used by the consumer, which can significantly impact results.

This includes the known scenario where a consumer actively chooses to remain on a higher speed tier despite being offered other options by their service provider.

One alternative, or additional piece of reporting, could be to compare RSPs over FTTP connections only.

Commentary in and accuracy of reports

Industry has perceived some issues with the commentary included as part of the ACCC reporting. At one point, commentary by the testing provider was included, then removed at a later date.

Additionally, the problems with the recent report on conferencing services makes clear that there needs to be further quality checking – including by discussions with impacted providers.

While there is a statement of expectations on participants, there is not one on the ACCC or the testing provider. We believe there should be one.

Ability to log issues and have an SLA for a response

Given that the periodically reported results of the MBA program are actively used in marketing and messaging of some ISPs, it is important that, if ISPs have genuine issues about the results, there is a method of formally logging these and that there be an SLA for a response by the ACCC, supported by SamKnows.

Supplier

We note that there have been some recent issues relating to SamKnows, including that they no longer have access to Measurement Lab in the United States.[5]

Additionally, assertions have been made in some other markets where SamKnows is a supplier, that it has difficulty measuring performance on higher speed plans (1 GB and above).

These issues point to the need for additional and more detailed transparency on how SamKnows operates its testing.

The ACCC should also consider existing commercial models with greater consumer visibility,

particularly as any speed check will only relate to a particular customer's situation and customers nearby to one another can generate quite different results, apart from other property-specific and related issues, such as the property lead-in and the modem used.

Ookla is one example of a supplier that typically makes use of larger sample size with independent results: https://www.speedtest.net/awards/methodology

The Netflix ISP speed test is another good independent source of speed data: https://www.canstarblue.com.au/internet/netflix-ranks-aussie-isp-speeds/

Also refer to the Choice test.

FUTURE OF THE PROGRAM

Before considering any potential expansion of the program, it is vital, in industry's view, that the issues with the existing program, outlined above, be addressed. Industry would be pleased to engage with the ACCC on the detail of the points raised and pathways to improvement.

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[5] https://www.measurementlab.net/blog/mlab-public-statement-samknows-experiment/

Funding

At present, the funding of the program is levied only on carriers. If the program expands to a larger number of non-carrier ISPs, consideration should be given to expanding the funding base.

Any future program, if agreed should require less funding than the current program, given the considerable stock of unused white-boxes held by the ACCC. Perhaps funds that it would seem should have been saved in the current program could be used to fund some future years, if the program is continued.

Proposed technology expansion

Industry does not believe it is sensible nor appropriate to expand the MBA program to 5G mobile services, home wireless broadband or fixed wireless (FW) services.

Fixed wireless

As previously outlined to the ACCC, attempting to apply the program to fixed wireless services will create congestion in those networks.

The results of such an attempt will, industry believes, vary considerably and generate unreliable data.

In short, we do not believe that such testing will provide an accurate or useful representation of an ISP's broader performance.

Home wireless broadband

The ACCC has not yet been able, in industry's view, to provide a comprehensively fair comparison for fixed broadband service performance, where it is relatively straightforward to control for factors in the NBN design. Given this, the program should not be extended into home wireless broadband services (e.g. 5G) given there is a wider range of factors to consider in making fair comparisons (e.g. location of tower, obstructions, location of devices within the home).

Furthermore, the home wireless market is highly competitive, with multiple carriers actively promoting services as set by the Australian Consumer Law (ACL), which includes speed performance. This is not the case for the underlying NBN technology in the fixed footprint, where there is comparatively little competition and therefore active monitoring can add value from an industry point of view.

Other fixed line networks

Some Communications Alliance members have raised the question of whether fixed line networks in new development areas should be included.

Proposed expansion to businesses

Members have not expressed any appetite to expand the program to small and medium business. There are many more factors why a customer chooses an RSP in the business segment, which ACCC reporting could not pick up on.

APPENDIX A: DISCUSSION QUESTIONS

1) To what extent has the program produced worthwhile outcomes and has met its objectives? (effectiveness)

Overall, the program has produced interesting information and underlined the positive performance of the NBN network and ISPs. However, the consultation paper does overstate some of these impacts, as outlined in this submission, and there is limited visibility on consumer (vs industry) web page visits, including to the dashboard.

2) What have been the particular features of the program that made a significant difference to achieving its intended outcomes? (impact evaluation)

Refer to submission.

3) What unintended outcomes (positive and negative) have been produced? (impact evaluation)

The misalignment between the reporting and the expectations set out in the Broadband Speed Claims Guidance has caused confusion and resulted in negative media stories about 'consumers not getting what they pay for' despite the tests showing that participants achieved results in line with – and often above – their advertised speeds.

However, the program's ability to quickly report on the performance of networks in light of the COVID pandemic was an unexpected positive impact.

4) Do the outcomes of the MBA program represent value for money? (efficiency)

As outlined in this submission, we have concerns about the lack of transparency on how the program budget has been used, particularly in regard to the limited number of active white-boxes. In short, the answer to the question is 'No' – if the program is to continue, we would expect the budget to be significantly lower.

5) What level of engagement have you had or expect to have with the MBA program and its outputs (reports, data release)?

We have been part of the industry briefings that the ACCC has held before the release of each report.

6) To what extent do the risks outlined above reflect the likely impacts from the discontinuation of the MBA program?

While we do not have a shared view on whether the program should continue, we view that the risks laid out on page 31 of the consultation paper are overstated. The ACCC's Speed Claims Guidance provides clear requirements for transparency, and the ACCC has the appropriate powers to investigate those claims, whether on an as needed or random 'spot-check' basis.

The combination of the Speed Claims Guidance, the ACMA's Service Migration Determination line testing capability requirement and Customer Information Standard and the anticipated rules on service reliability means that consumers will certainly have ongoing access to reliable pre-sale and post-sale information.

7) What other data or market-led tools could assist in promoting the outcomes that the MBA has achieved, and are these sufficient to drive the consumer and market outcomes expected currently and into the future?

As noted in the response to question 6, the ACL and associated Speed Claims Guidance already fills the role of requiring clear and accurate information to be provided to consumers on broadband performance.

8) If the MBA program is extended to NBN Co's fixed wireless network how could the ACCC work with partners to build these cohorts quickly?

The program should not be extended to fixed wireless, for the reasons outline above.

9) Should an extended MBA program continue to focus solely on NBN services? What are the benefits in extending the program to capture competing networks? If so, should they be fixed-line only or seek to cover wireless home broadband services including those being deployed by mobile network operators as well?

We do not have a shared view on whether the program should expand to non-NBN fixed-line services, but the program should absolutely not seek to cover wireless home broadband services.

If the program does expand, it is vital that the issues raised in this paper – methodology, sample size and transparency – are resolved before any steps are taken towards expansion.

10) The ADSL network has been used as comparator for NBN fixed-line services in MBA program reports. As ADSL is being displaced, what network or networks would be a suitable benchmark comparator to the NBN network?

There may not be a further need for a comparator network.

11) Which RSPs who are not currently being reported on could be considered for inclusion in an extended program, and why? How can sufficient volunteers be attracted to enable the proposed inclusion?

No comment.

12) What short and long term strategies could assist in promoting interest and continued engagement with the program to ensure that the panel accurately reflects the market as a whole?

No comment.

13) Are there any metrics that are not currently included in MBA reports that would provide valuable information to consumers and direct industry and policy responses?

The report should add information that is meaningful to consumers, including contextualising the performance and differences in results.

Additionally, the current metrics should be improved through appropriately controlling for variables such as location and underperforming lines – particularly those not within control of the RSP.

14) Are there any further tests or reporting mechanisms that would assist in detecting systemic consumer experience or other network issues to promote their timely resolution? Is this test a cost effective option?

No comment.

15) In MBA Report 3, a comparison was made between MBA data from urban and regional Australia.

a) Are these geographic splits useful for industry and policymakers?

Yes, and they should be accounted for in the headline reports as well.

b) What other comparisons would be helpful for industry and policymakers in their decision making?

No comment.

16) In regards to the MBA program data:

a) Is it sufficiently accessible and useful for consumers?

No, as the data included in the media release (which is what is accessed by most consumers via the news media) creates confusion by reporting against the wholesale speed tier instead of the advertised speeds.

The data also does not provide context on what the data means for consumer experience. For example, a consumer may assume that if RSP A is performing 1 mbps better than RSP B, they should go with RSP A, even if they prefer RSP B for price, customer service of other reasons – without understanding that a 1 mbps difference will not make any significant difference to the user experience.

b) Is it likely that intermediaries, comparator service providers and other market participants will or are likely to make use of the data to help inform consumers?

No comment.

c) How can we help to promote greater proliferation of the data to promote a better functioning of the market?

Improved reporting, as discussed above, could make the results more meaningful to consumers and thus lift its profile.

17) MBA reports are released quarterly, including with a MBA Monthly Report that covers a period of three months and details the daily network level performance of each month.

a) Is this frequency sufficient?

Yes.

18) Is there value in harnessing SamKnows' international data to provide policymakers and the market with data on how Australia compares with these jurisdictions? If so, what measures are most important to compare and how could they be presented?

This could be valuable at an industry-wide level to help policy makers only. This should not be publicly released, given the strong opinions that Australia's ranking in fixed broadband speeds tends to generate following any similar public report (e.g. Ookla).

19) Is the current residential focus of the MBA relevant to small and medium businesses? Would a specific panel of business volunteers and the addition of new performance metrics provide data that is more relevant to their needs?

As outlined above, businesses tend to take account of a wider range of considerations when choosing a provider, but will doubtless often look to the residential results as one factor to take into account.

20) For RSPs who offer services to small and medium enterprises, would you be willing to assist with expanding the program to measuring performance on business services?

N/A

21) Are there any further enhancements to the testing methodology or testing infrastructure that would further promote the ongoing integrity and reliability of the MBA data and results?

Yes. This is addressed further under increased transparency, but broadly, the testing needs to align with the Speed Claims Guidance and the program needs to give appropriate opportunities for industry and the public to understand and verify the methodology and accuracy of results.

22) The ACCC released a Statement of Expectations in August 2019 setting out a number of principles to provide assurance over the veracity and independence of the program.

a) Is this a sufficient safeguard against misuse of the program by RSPs?

Yes, particularly as we are not aware of concerns or evidence of misuse.

b) Are there any further actions that should be taken, either through technical/methodological aspects of the program, or via stronger commitments from participants?

Yes, significant changes are needed in the technical and methodological aspects – see section on Improved Integrity.

23) Subject to safeguards being in place to protect the integrity and independence of the program, would RSPs be open to:

a) assisting the ACCC to build interest in the program among their customers to ensure monitored cohorts reflect the broadband market as accurately as possible, and network owners as part of nominating their network as benchmark comparator to the NBN?

b) deploying a software-based testing client, embedded into their customers' equipment, to expedite the growth of a broad reporting panel?

We would need to see more detail on what would be proposed, before offering a substantive comment.