



Submission to the Australian Competition and Consumer
Commission's (ACCC) Discussion Paper:

'Broadband Speed Claims'

25 August 2016

1. Background

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see www.amta.org.au.

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>.

2. Summary

Communications Alliance and the Australian Mobile Telecommunications Association (AMTA), "The Associations", are pleased to have the opportunity to provide feedback on the ACCC Discussion Paper.

The speed of data uploads and downloads on broadband services is only one of many factors impacting customer experience.

Industry strongly supports broadband customers being adequately informed about the experience that they can expect to receive.

Industry proposes that the current ACCC guidance as to how broadband speeds can be communicated should be updated to remove ambiguity and to encourage Retail Service Providers (RSPs) to provide adequate information about broadband speed and performance expectations to customers. We further propose that this guidance be incorporated into an industry Guideline as detailed in Section 10 of this submission.

Industry is already taking steps, via an education package being prepared by industry – and on which consumer representative and Government/Regulator input will be sought – that can be widely distributed to help improve consumer awareness of the factors that can influence the performance of broadband services and how to make best use of the available access technologies.

As is outlined in this submission, we believe that Government and regulators should allow RSPs and market forces to implement the necessary changes.

The recent strong uptake in Australia of Streaming Video on Demand (SVoD) services and the general strong upward movement in the volume of data downloads in Australia has doubtless put all Australian broadband networks under additional pressure. The so-called "Netflix effect" is a recent phenomenon. Industry is adjusting to the new paradigm but transitional steps are still underway and more time is needed to see the full effect of these network enhancements.

Industry strongly believes that it is important to focus on principles, given that it is not realistic to make deterministic statements about speed and performance for individual customers. The market and technologies are also highly dynamic. Any attempt to prescribe a solution will quickly become outdated and there is a real risk that any prescriptive approach would stifle innovation in the industry.

In this regard, most industry participants remain deeply sceptical as to whether the ACCC's proposal for a broadband quality monitoring regime in Australia would achieve its objectives, as further detailed in Section 8 of this submission. Smaller RSPs are concerned that the type of scheme being proposed by the ACCC, if implemented, might actually prove to generate anti-competitive effects. Most industry participants further believe that any consideration of a monitoring regime should not extend to mobile broadband performance, as is further explained in Section 8 of this submission.

3. What are the Impediments to ISPs Publishing Precise Speed Information?

One of the reasons that industry is constrained in its ability to offer more transparent information about broadband speeds and performance is the restriction placed on industry by the ACCC.

In the ACCC's Information & Industry Guidance Paper: *Broadband Internet Speed Claims and the Trade Practices Act 1974*, the ACCC provides the following guidance:

"ISPs should avoid using hypothetical speeds in headline claims describing a service and in the names or titles that ISPs give to particular plans... ISPs must be able to substantiate stated maximum or "up to" speeds as being achievable by users of their services."

The ACCC guidance also requires ISPs to take account of a wide range of factors when they wish to make any statement about the data transfer rates available to consumers using their services.

There are many factors that impact broadband speed and performance, including the number of users of a broadband service within a customer's premises, the nature of the connection (e.g. cable or Wi-Fi) used to access the customer gateway, the distance from the exchange (especially for ADSL services), the location of the content being accessed, the load being placed on international network links and any external interference sources.

Further, networks invariably feature aggregation points, which amount to a shared resource being used by multiple end-users and which bear on the potential for network congestion – a factor that varies over time and impacts overall performance. In nbn-based networks, the Connectivity Virtual Circuit (CVC) component bears these characteristics. These factors mean that it is unrealistic for ISPs to accurately describe likely broadband performance on a customer-specific basis, thus making it impossible to make any precise claim about data transfer rates.

The ACCC in the consultation paper focuses also on the provision to consumers of information about performance during peak periods. For access technologies that are effectively a user-shared resource – e.g. ADSL, HFC and satellite, - service parameters and performance will always vary in response to heavier overall demand, making it impossible to state exactly what speed will be "attainable". The situation is analogous to that of a highway where a maximum speed of 100 km/hr is usually achievable at off-peak times but can drop to anywhere in a wide range between say 10 km/hr and 100 km/hr in the morning or afternoon busy hours.

The ACCC's approach to date however, as reiterated in the Discussion Paper, states that any advertised speeds *".....must represent attainable speeds"*.

4. Average Speeds vs Headline Speeds

A more meaningful and practicable way to communicate speed performance is by looking at the average performance over a longer period e.g. a month or even a year.

The Government has also historically recognised this reality. For example, the Australian Broadband Guarantee program, which ran from 2007 to 2011 and offered subsidy payments to service providers that offered “Metro Comparable” broadband services to consumers in remote areas of Australia.

A Metro Comparable service was defined as any service that offered 512 kilobits per second in download speed and 128 kilobits per second upload data speed, with three gigabytes per month of data usage at a total cost of \$2500 GST inclusive over three years, including installation and connection fees.

The Government put in place a monitoring program to verify that the services being offered fitted those stated parameters. Significantly, however, for the service to meet the compliance test, the Government did not require that the 512/128 kbps speeds be attainable by consumers 100% of the time.

5. Public Education

One important tool to help consumers optimise their broadband experience is simply to improve their awareness of the characteristics of access technology and the factors that influence its performance.

With this aim in mind, Communications Alliance and its Members are in the process of preparing a public education package, designed to be suitable for promotion through a range of stakeholder channels.

Consumer representatives, the Department of Communications and the Arts and the ACMA have all signalled their willingness to review and contribute to this material. It is expected that the package will be available for distribution before the end of 2016.

6. Customer Satisfaction – evidence based approach to what Internet users care about

Industry believes that the focus in the Discussion Paper on upload and download speeds risks giving disproportionate emphasis to just one of the factors that contributes to the overall internet user experience.

In 2015 Communications Alliance commissioned Roy Morgan Research to investigate which characteristics of a broadband service were of most importance to consumers.

The research, undertaken as part of a broader consumer satisfaction survey, indicated that the two factors of most importance to the consumer experience were the price of the service and the size of the monthly data allowance.

The consistency/reliability of the service was rated the third most important characteristic, followed by the upload and download speeds of the connection during the busiest hours (i.e. in the evenings).

The findings of the Communications Alliance research were backed up by research undertaken on behalf of the Australian Communications Consumer Action Network (ACCAN) by Galaxy Research in January 2016.

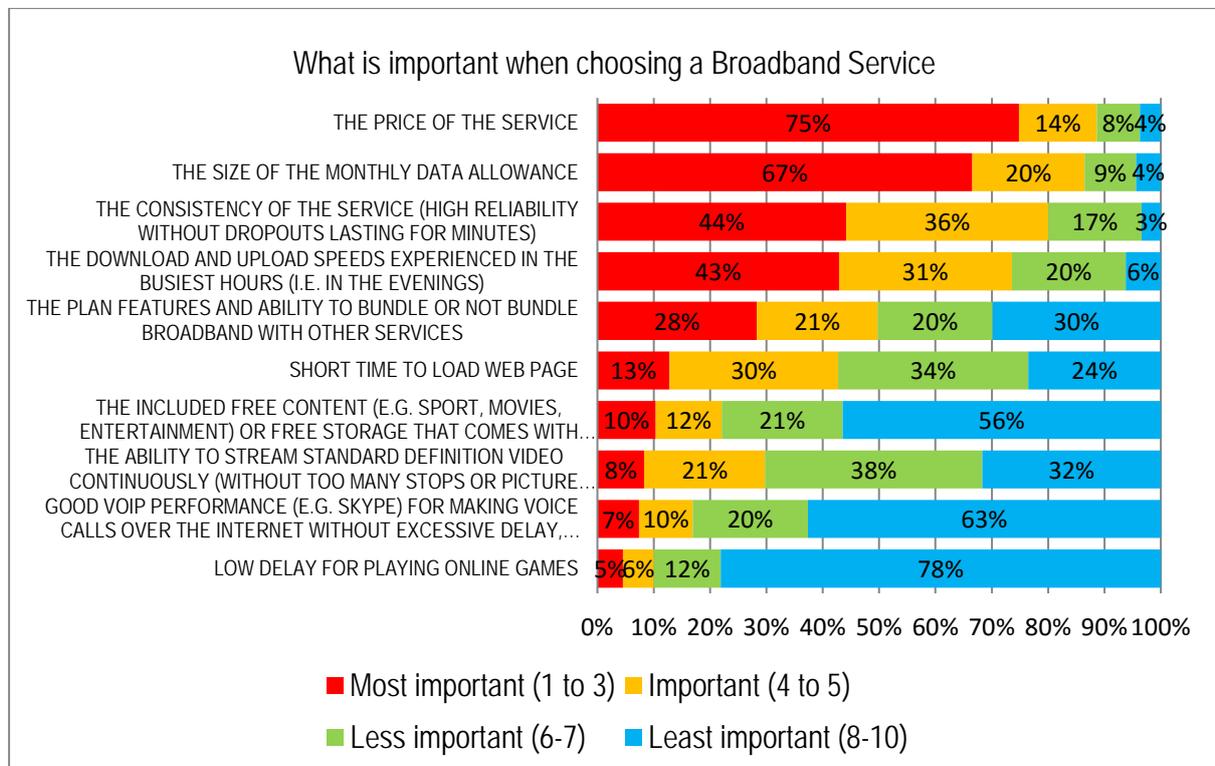
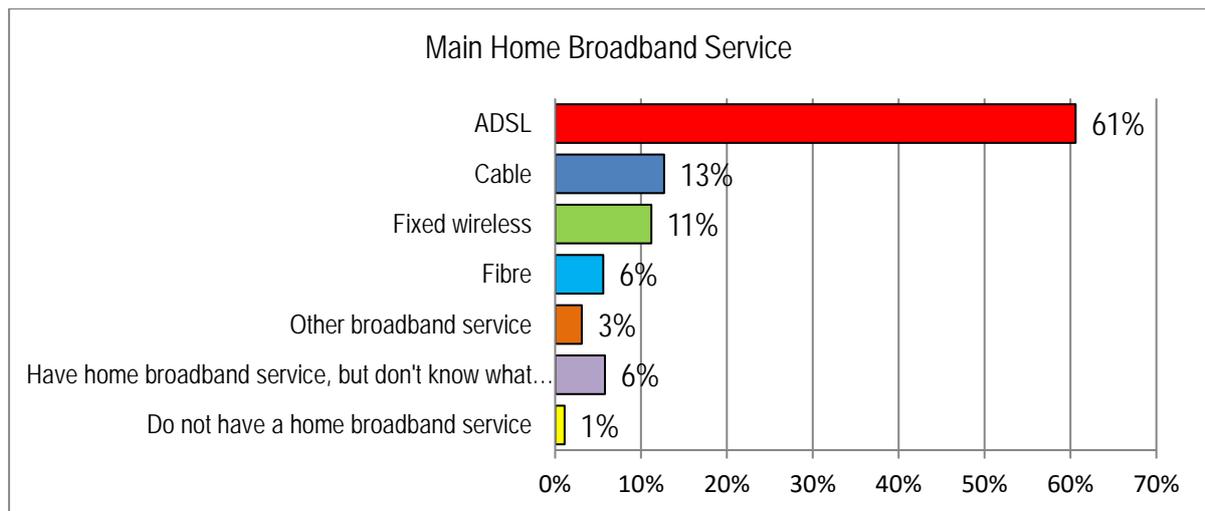
This survey conducted interviews with 1,011 Australians who helped decide on the broadband/internet subscription for their household.

The survey found that the single most important factor when choosing an internet service provider is the price of the service.

The monthly data usage allowance was described as the second most important factor. The next two factors most often cited as the most important factor were:

- "having a provider with a good reputation/one who we know"; and
- having "the best quality internet service".

Distribution of broadband access technologies among survey respondents



7. Internet Complaints in Context

At Section 1.7 the ACCC discussion paper comments on statistics published by the Telecommunications Industry Ombudsman (TIO) relating to complaints about slow internet data speeds, unusable internet services and connection problems.

The ACCC selected two data points to indicate an increase of 56.8 per cent in complaints about slow data speeds between the October 2014 quarter and the October 2015 quarter.

Several points need to be made in respect of this:

- The October 2015 quarter complaints figure was actually lower than the previous two quarters; and
- Figures yet to be published by the TIO covering the June quarter of 2016 show that there was no growth in this category of complaints from the March quarter 2016 to the June quarter 2016.

The complaint numbers also need to be considered in context.

First, taken as a proportion of the approximately 6.7 million fixed broadband connections that were in use in Australia as at December 2015 according to the Australian Bureau of Statistics Internet Activity Report, the TIO's reported 2159 complaint issues received in the January 2016 quarter mean that approximately 0.0003 per cent of fixed broadband services in operation were the subject of a complaint to the TIO relating to slow data speeds during that quarter. If the more than 27 million mobile internet services in Australia were factored into this equation, the results become even more miniscule.

Secondly, the complaint data need to be set against the background of continuing growth in the total number of broadband services in Australia. According to the ABS, there was a net increase of 255,000 fixed broadband services in Australia between December 2014 and December 2015.

Finally, it needs to be appreciated that the volume of data being downloaded by Australians has grown dramatically in recent years – a trend that has been accelerated during the past 12 months by the significant uptake of streaming video on demand (SVoD) services in Australia. The most recent Key Indicators data published by the Australian Communications and Media Authority (ACMA) report that Australians downloaded 1,349,975 terabits of data in the June 2015 quarter – an increase of 40.1 per cent on the corresponding quarter in 2014 and an increase of more than 500% on the corresponding quarter in 2011.

It needs to be appreciated that large increases in the volume of data being downloaded have implications for the performance of many broadband access technologies – and in particular for ADSL services, which still comprise the majority of fixed broadband services in Australia.

As is well known, the upload and download speeds attainable on ADSL services vary according to the distance of the end user from the nearest telephone exchange. ADSL subscribers who are a relatively long distance from their local exchange will by definition experience slower speeds and this limitation is exacerbated when greater strain is placed on the service via requests for higher download volumes. In these circumstances an ADSL service that the user has long perceived to be performing satisfactorily may become perceived to suffer from slow speeds because of nothing other than the greater demands being placed on it by the consumer – prompting a complaint to the TIO.

The ACCC Discussion Paper also makes reference to consideration being given by the UK regulator, Ofcom, as to whether automatic consumer redress should apply when broadband services "fall below expectation".

It should be noted that such a mechanism is not necessary in Australia, given that the Australian Consumer Law provides ample opportunity for consumers to seek compensation under the Consumer Guarantee provisions, in circumstances where a broadband service is not fit for purpose or has not been accurately described to the purchaser.

8. ACCC's Proposed Broadband Performance Monitoring and Reporting (BPMR) Program

Since 2013 the ACCC has been exploring the idea of creating a BPMR Program based on the installation of monitoring probes in customer premises. The discussion paper continues to champion this idea.

Many industry participants are deeply sceptical as to whether such a program can achieve its objective and believe that the ACCC is significantly underestimating the costs of such a scheme.

If a probe-based monitoring scheme is bought as a service, the typical industry rule-of-thumb is that it costs in the vicinity of \$100 per probe per month.

Thus if the ACCC proposes to insert 1500 probes, this will cost in the vicinity of \$1.8m per annum.

However, 1500 probes spread across multiple access technologies, multiple locations across the country and divided between the customers of multiple service providers cannot conceivably produce robust, publishable data comparing the relative performance of Australian broadband services.

So it would appear that the ACCC either:

- would need to embark on a vastly more expensive scheme – the costs of which will ultimately be borne by consumers; or
- would not meet the objective of allowing consumers to make informed comparisons between the performance of specific service providers in specific locations.

The experience in Canada is somewhat instructive. The Canadian Radio-television and Telecommunications Commission (CRTC) has engaged a vendor to run a broadband measurement study that involved 4,486 devices inserted in the homes of volunteers – i.e. almost three times the number of probes proposed by the ACCC.

In a report published in April 2016 and based on data received from 3,471 probes, the vendor said it declined to publish data comparing individual ISP performance, although it says it plans to do so in a further report later in 2016.

There is a view among many industry participants that the proposed BPMR also risks generating unintended consequences. Recent media reporting (see below) points to the risk that the BPMR would act to force Australian broadband prices upward and/or remove the more affordable broadband options, thereby disadvantaging lower-income consumers in particular.

"In politics you never have an inquiry unless you know the likely outcome," Lindsay Strategic Advisory managing director and former iiNet and Internode CTO John Lindsay said.

"This review is going to make it plain that RSPs [retail internet service providers] need to purchase more NBN CVC, but this is only affordable for them if retail ISP prices rise or if NBN Co reduce their charges.

"This inquiry is likely the first phase of a plan that will see a significant rise in the price of NBN-delivered ISP services in Australia."

In addition to price rises, others believe that choice – particularly at the cheaper end of the broadband market – could fall away.

"Following this through to its ultimate conclusion, poor performing networks are identified, and attempt to lift their game. To do this they need to spend money, so they need to charge more money," one industry source said.

"So instead of having a range of ISPs with a range of performances at a range of price points, you end up with a dozen perfectly performing ISPs all charging \$150/month.

"How about an ISP that wants to offer a cheap and cheerful product at a low price point, or wants to excel at customer service, and chooses to offer a slightly wobbly performance during peak times because its budget is directed towards excellent call centre staff within Australia instead of network capacity?"

"For many people this might represent better value for money, but management by metric won't allow cheap and cheerful services to exist, especially if there are thresholds that have to be hurdled to earn a certain speed or performance label."

Source: ITWire 27 July 2016

In a competitive and diverse market, consumers ought to retain the option to purchase a lower quality service at a reduced price

It is also premature to consider any such programme before the issues in the broadband speed claims guidance have been properly worked through and industry given an opportunity to make any adjustments to the way it is marketing information about broadband speeds.

Instead of pursuing a centralised reporting program, it would be more effective to encourage individual RSPs to publish adequate information about the performance of their services to customers, along with consumer educational material which explains the various factors to consider when purchasing a broadband service and how to resolve any difficulties when expectations are not met. Implementation of this recommendation is also likely to capture a much wider set of RSPs, as opposed to a more narrowly focussed scheme that will exclude many industry participants.

Smaller RSPs are concerned that any RSP broadband ranking scheme which focuses solely on larger RSPs could actually be anti-competitive, in that it might encourage consumers to purchase from larger well-performing RSPs and by suggestion due to exclusion, divert consumer spend away from smaller RSPs, despite the fact that the smaller players might meet or exceed the performance of the larger players featured in the rankings.

Recognising these misgivings among many industry participants as to whether the ACCC-proposed scheme is workable, a majority of Communications Alliance members believe that if any monitoring scheme is introduced, it should focus on next-generation fixed services. There are major statistical difficulties with sampling ADSL services, for example – the quality of which are greatly influenced by the distance of the service end-point from the nearest PSTN exchange.

Similarly, many members of the Associations do not believe that any regime should extend to mobile broadband performance. There is a strong view among these industry participants that no further guidance on mobile broadband service is required. We are not aware of any evidence pointing to an increase in reported difficulties with mobile broadband speed related issues. Also, there are already several independent public reports (e.g., the P3 mobile survey and OpenSignal reports) that report on how mobile performance is tracking. These reports show how mobile speeds in Australia are already world class and continuing to improve.

Any scheme which focuses on 'snapshots' of the performance of a service at a particular point in time will not provide a reliable indicator of overall service performance, nor customer experience.

Industry experts within the Associations' membership have commented that there appears to be a disconnect between the ACCC's expectations and an understanding of the underlying technologies. Every broadband access technology has its own set of capabilities and limitations, which need to be understood and taken into account when assessing performance.

9. Existing Tools to Assist Consumers to Monitor Broadband Quality

There is a range of tools available to consumers today to enable them to monitor the quality of their broadband service and to gather information about internet service providers and the service experiences available. These include but are not limited to:

- Internet comparison web sites, such as ***whistleout.com.au*** and ***comparebroadband.com.au***;
- The Department of Communications and the Arts (DoCA) online ***My Broadband*** database; Communications consumer-focused websites such as ***Whirlpool***, which offers a forum whereby prospective purchasers of a specific service in a specific location can seek feedback from users of that ISP in that area;
- Online speed measuring tools such as that provided by ***Speedtest.net***; and the ***Netflix fast.com*** tool. and
- Broadband quality monitoring systems, which enable consumers to monitor a range of service characteristics, including upload/download speeds, latency and packet loss. These products – some of which are available free of charge – are readily available online from providers such as ***Think Broadband***, ***Smokeying***, ***Visualware*** and ***Beagle Software***.

10. Industry Recommendation

Proposal for Communications Alliance to develop an industry Guideline on making representations about broadband performance.

The Associations believe RSPs are best placed to communicate information to consumers about the broadband performance they can expect to receive, including taking account of the wide range of factors which can affect the actual performance achieved. However, we also recognise that there is a need for some guidance to be provided to RSPs about the language used in discussing broadband performance with consumers so there can be a level of common understanding.

We think this guidance should be provided through a Communications Alliance Guideline because the industry is in the best position to interpret the technical parameters, keep the guidance up to date with changes in technology, and ensure that it is workable. We note that the approach adopted by Ofcom in its 2015 voluntary code of practice on broadband speeds might usefully inform the approach in the Guideline. Relevant material from the

ACCC's existing information paper would also be considered for incorporation in the Guideline. The new Guideline would be developed in consultation with industry, the ACCC, ACMA, DoCA, ACCAN and other regulatory stakeholders and consumer groups.

We think it is important that the new Guideline should be based on technically sound principles and communicate information on the range of relevant factors (not only access network speed) that contribute to a customer's broadband performance experience, noting the many factors outside the direct control of the RSP but still important for the consumer's overall experience.

We are suggesting that the new Guideline could effectively replace the ACCC's existing information paper. We note that the adoption of such an industry guideline would not prevent the ACCC from using its powers in taking enforcement action under the *Competition and Consumer Act 2010 (Cth)* or the Australian Consumer Law in circumstances where it considers an RSP is making inappropriate or unsubstantiated claims. Any such action should take compliance with the Guideline into account.

In our view, the industry guideline will re-affirm industry's commitment to consumer protection and customer service, make a significant contribution to improving the representation of broadband speeds, and assisting consumers to be better informed and make better judgements when purchasing a new broadband service or having difficulty with the performance of an existing broadband service.

We would appreciate the opportunity to further discuss this proposal with the ACCC.