

## Article Information

Author: Tim Clark

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# Stay in your speed lane - a further warning to retail carriage service providers about NBN speed claims and associated upcoming standards

## Following continuing complaints by consumers in relation to differences between the advertised NBN service speeds and those actually experienced by consumers

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Following continuing complaints by consumers in relation to differences between the advertised NBN service speeds and those actually experienced by consumers, the Australian Competition and Consumer Commission (ACCC) continues to monitor the claims made by retail carriage service providers (RSPs) and has now taken action against one RSP.

By way of background, on 21 August 2017, the ACCC published guidance, *Broadband speed claims: Industry guidance (ACCC Guide)* for RSPs on how they should advertise speeds for their fixed-line broadband services. We have previously discussed the [ACCC Guide in more detail](#). A key message from the ACCC Guide was that RSPs should indicate, in broadband plan descriptions and in advertising them, the speeds at which plans typically operate during the busy evening period (7pm-11pm). The ACCC Guide warned against simply repeating the theoretical maximum speeds from the NBN (or other wholesale service). If the maximum speeds were used, they should be carefully and clearly qualified.

Since publishing the ACCC Guide, the ACCC has received at least eight court-enforceable undertakings from various RSPs in relation to speed claims including Telstra, Optus, TPG, iiNet, Internode, Dodo, Primus Telecommunications and M2 Commander.

### ***MyRepublic case***

In the latest round of action taken by the ACCC, NBN reseller, MyRepublic Pty Ltd (**MyRepublic**), was fined \$25,200 for making false or misleading representations in relation to its NBN services.

Between December 2017 and April 2018, MyRepublic had marketed its NBN services as “up to nbn™100 Speed Tier” and “nbn™50 Speed Tier”. The ACCC considered that these statements would likely mislead consumers into believing that they would be able to obtain broadband internet speeds of, or close to, 100Mbps and 50Mbps at all, or almost all, times, when this was not the case.

The ACCC also considered that fine print disclaimers in advertising by MyRepublic were insufficient as they were not sufficiently prominent or clear. Examples of the fine print disclaimers used on MyRepublic’s website banners can be seen on the ACCC’s news page on the [ACCC’s news page](#).

### ***ACMA joins the party***

On 21 June 2018, the Australian Communications and Media Authority (ACMA), using its powers under the *Telecommunications Act 1997* (Cth), issued the Telecommunications (NBN Consumer Information) Industry Standard 2018 (**Standard**). The Standard specifies the minimum information RSPs must provide, when supplying services on the NBN, before consumers sign up.

The Standard requires that RSPs must prepare and provide consumers with a “Key Facts Sheet: NBN Services” containing information about NBN services being supplied, including highlighting the NBN speed tiers as a key factor and providing typical busy period download speed information. The Standard also provides for minimum requirements in relation to

advertising material, provision of advice to consumers about NBN services and record-keeping.

The Standard commences on 21 September 2018. Any contraventions of the Standard may result in injunctions or civil penalties up to \$250,000 for a body corporate (or \$50,000 for other persons).

To support the Standard, ACMA has also published guidance in *A better practice guide for NBN providers (ACMA Guide)*. The ACMA Guide aims to provide examples of best practices to RSPs in providing clear and more useful information to consumers moving to the NBN including examples of the new 'key fact sheets' RSPs must provide to customers before the customer signs up for an NBN plan. The ACMA Guide was developed jointly by ACMA and the Government's Behavioural Economics Team and is said to make use of behavioural insights to assist RSPs provide more understandable information. Further details and a download link can be found [here](#).

### **Further developments**

On 26 February 2018, independent Commonwealth MP, Andrew Wilkie, introduced a private member's bill into the House of Representatives - the *Competition and Consumer Amendment (Misleading Representations About Broadband Speeds) Bill 2018*.

The Bill proposes to amend the *Competition and Consumer Act 2010 (Cth)* by introducing a specific prohibition on making misleading representations in respect of broadband internet speeds. The Bill provides that any representation in connection with the supply or promotion of broadband services must include information about typical (not maximum) broadband speeds that the average customer can expect to receive. It proposes to impose penalties for contraventions of \$1,100,000 for bodies corporate (or \$220,000 for other persons). At the time of writing, the Bill is currently still before the House of Representatives.

The ACCC Guide is due for review by the ACCC to ascertain whether it has been effective in addressing consumer concerns over speed claims and the comparability of fixed line broadband plans.

### **Next steps**

With the focus of the ACCC and ACMA on the area, RSPs who do not provide accurate information to consumers in relation to their NBN services risk exposing themselves to significant legal consequences.

RSPs should review their broadband internet plans and advertising to ensure they are compliant with the ACCC's Guide and that fine print disclaimers are not being relied upon in a manner that is likely to involve further scrutiny. RSPs should also be reviewing plans and advertising, and business processes, to ensure they will be in compliance with ACMA's new Standard when it comes into force on 21 September 2018.