

9 September 2016

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne VIC 3000

Via: broadbandperformance@accg.gov.au

Dear Mr Sims

Discussion paper: Broadband Speed Claims

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to comment on the Australian Competition and Consumer Commission's Discussion Paper on Broadband Speed Claims (the discussion paper).

The TIO is a free, independent external dispute resolution service for small business and residential consumers who have a complaint about their telecommunications service in Australia. We receive a number of complaints from consumers about broadband speed claims associated with their services.

My letter sets out:

- some background on the importance of internet speeds to consumers, and
- three recommendations on improving information available – to improve consistency in expectations of internet services service, ensure realistic expectations about services delivered over the National Broadband Network, and to assist in the resolution of complaints

Internet speeds are important to consumers

Complaints to the TIO indicate the quality and performance of internet services is very important to consumers. In 2015-16, we received more complaints about slow data speed than any other issue – a 48 per cent increase on the previous year. Of these, 16 per cent were complaints about slow data speed on the National Broadband Network (NBN).

Since the ACCC first published its guidance on speed claims in 2011, there has been significant change in the telecommunications sector. Consumers are accessing the internet using a wider range of technologies. The NBN rollout uses a range of technologies including Fibre to the Premises (FTTP), Fibre to the Node (FTTN), Fixed Wireless, Satellite and Hybrid Fibre-Coaxial (HFC). Each of these technologies has associated broadband speed information directed at consumers.

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

PO Box 276 Collins Street West
Vic 8007
Level 3, 595 Collins Street
Melbourne 3000

Tel freecall* 1800 062 058
Fax freecall* 1800 630 614
Telephone 03 8600 8700
Fax 03 8600 8797

TTY 1800 675 692
Email tio@tio.com.au
Web www.tio.com.au

* calls from mobile phones may incur charges

Fast, reliable internet services have become increasingly important for residential and small business consumers. They enable consumers to conduct a range of online activities from home, students to access educational materials online, and small businesses to operate more effectively.

TIO observations and recommendations

The discussion paper asks a number of questions regarding how information about broadband speeds is presented to consumers as well as how retail service providers (RSPs) respond to consumer complaints.

The TIO has several recommendations about the information made available to consumers about broadband speeds. These are to improve information available to

1. promote consistency in expectations between consumers and providers about speeds.
2. ensure realistic expectations about the speed of services provided over the NBN.
3. assist in resolving consumer complaints about slow internet speeds.

1. Improve available information to promote consistency in expectations between consumers and providers about speeds.

The TIO believes that better information is required to promote consistency in expectations between consumers and RSPs. This includes information provided by RSPs as well as publicly available information about broadband speeds and the factors that may impact their service. Where this information is not correct or not provided, consumers will complain to the TIO.

The information available to consumers to assist them with making a decision to enter into a contract, as well as the information provided at the point of sale, is very important.

Incongruent information does not only arise in circumstances where a provider has made explicit representations as to achievable speeds. Consumer expectations about the quality of internet services are shaped by their perceptions of the underlying technology. For example, consumers generally expect that ADSL2+ services should be faster than ADSL services and may be unaware how distance from the local exchange may impact the speed they receive. Likewise, consumers expect that NBN services will be faster than all legacy network services.

A common cause of consumer complaints about slow data speeds arises from differing expectations from consumers and their providers about achievable data speeds. In 2015-16, the TIO received 475 complaints from consumers who raised disputes about both slow data speeds and the information provided at the point of sale. While these numbers may be a small percentage of total complaints to the TIO, it represents a 23 per cent increase when compared to the previous financial year.

2. Improve available information to ensure realistic expectations about the speed of services provided over the NBN.

The TIO believes that more public information is required to properly ensure realistic expectations from consumers about services provided over the NBN.

In complaints to the TIO, we have observed that expectations about speeds are higher for NBN services. Public information and marketing about the NBN promotes fast data speeds. Consumers also purchase NBN service plans based on speed tiers, which further contributes to expectations about performance.

In 2015-16, almost a quarter of all complaints to the TIO about both slow data speeds and point of sale advice were about services delivered over the NBN. While this is again only a small number of complaints, year on year complaints about both slow data speeds and point of sale advice for NBN services increased by 331 per cent.

Consumers who complain about NBN services are also more specific about the level of speeds they are achieving (in megabits per second or Mbps) and how these may fall short of specific expectations or representations made by their retail service provider.

3. Improve available information to assist in resolving consumer complaints about slow internet speeds

The TIO believes increasing the amount of public information about broadband speed claims is required to assist in resolving consumer complaints.

A common theme related to internet complaints is an acknowledgment from RSPs that slow speeds are attributable to network congestion. In many cases, RSPs advise they are not in a position to remedy these issues, especially where they do not own the underlying telecommunications infrastructure on which they are selling the service. Consumers also tell us they are told that the impending NBN rollout schedule in a given area, even where no date for the roll out has been set by the Government, prevents service providers from upgrading existing infrastructure to allow for faster ADSL services.

Slow speeds can also be a result of a number of factors. This can lead to protracted troubleshooting timeframes to determine the cause of slow data speeds. Furthermore, as slow data speeds can manifest in varying levels of degradation, complaints about slow data speeds generally take longer to resolve than complaints about fully unusable services.

When it comes to resolving slow internet speed complaints, the TIO's experience is that consumers generally want their service to perform at the level they expect, or the level as represented by the RSP, rather than accept cancellation of their contract without cost. Refunds for service charges paid during the periods that they have not been able to fully use the services are also a common additional resolution request.

A remedy is not always forthcoming even where the RSP has some control over the underlying infrastructure, or, for NBN services, has the ability to purchase additional capacity. It can take some time before the RSP makes the business decision to increase capacity in a consumer's area. The TIO cannot compel a retail service provider to do this quicker.

Further, where an RSP represents that the speed issues are from factors beyond their control, resolutions can be limited. Common resolutions include the release of a consumer from their service contract without cancellation fees, and where relevant, a refund of service charges paid during the period they experienced slow data speeds.

Further information

If you require further information from the TIO, please contact my Executive Officer, Mr James McDonald on 03 8680 8526 or by email to james.mcdonald@tio.com.au.

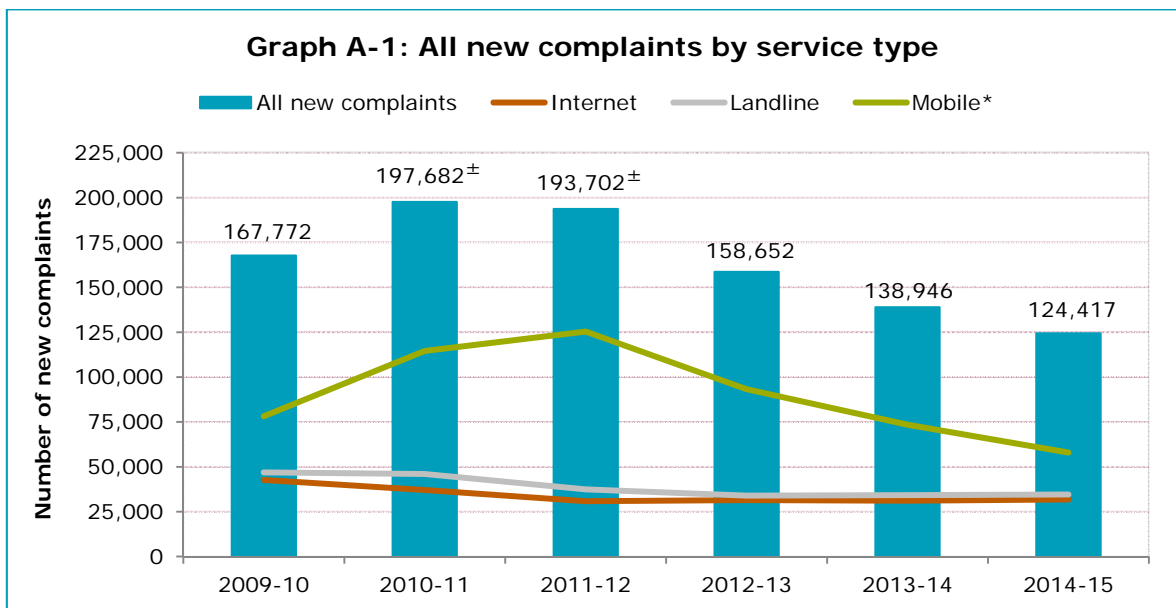
Yours sincerely



Judi Jones
OMBUDSMAN

Appendix: Complaints to the TIO

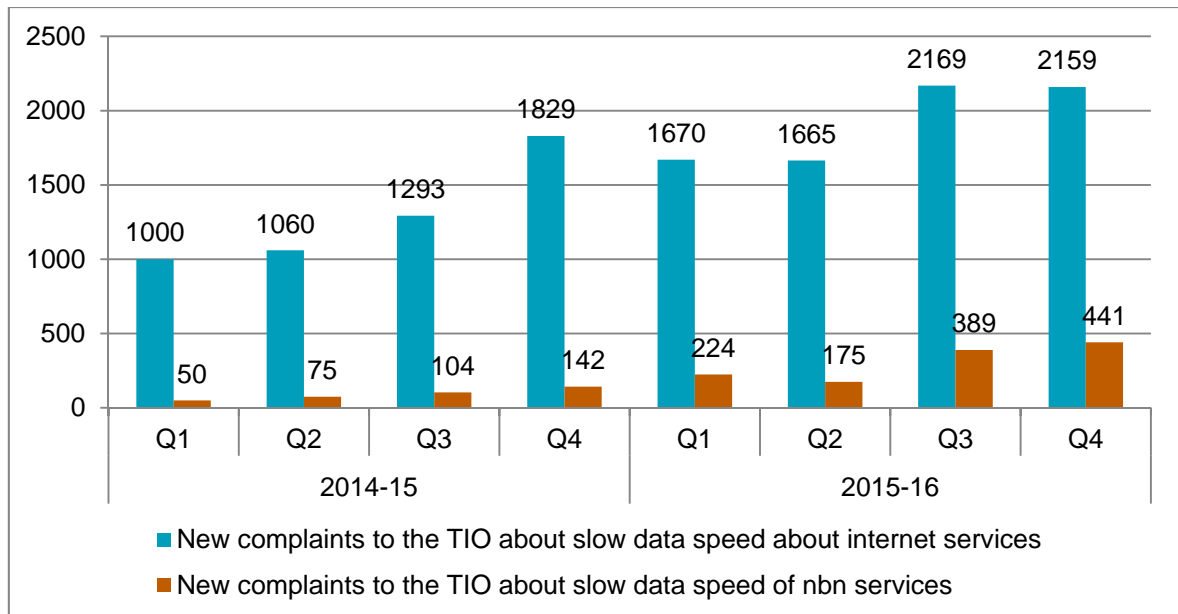
Graph A-1 Overview of TIO complaint trends by service type



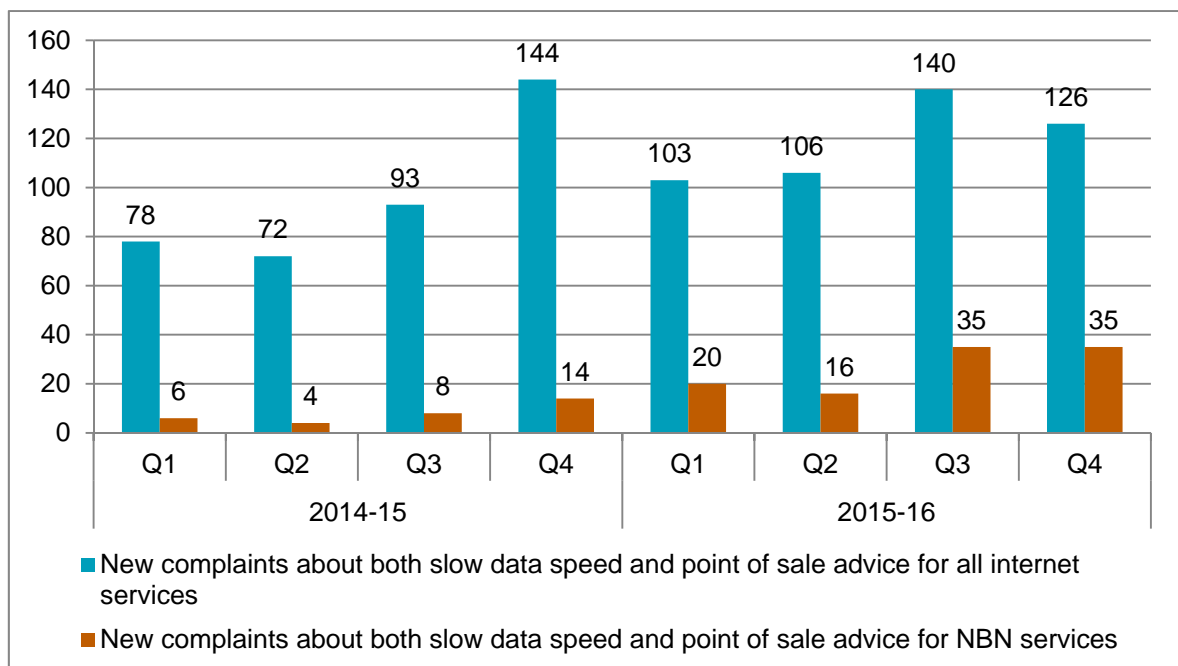
* New complaints about mobile premium services and direct carrier billing are included in this figure

±The sharp increase in mobile complaints from 2010 to 2012 were driven by mobile network issues.

Graph A-2 New complaints to the TIO about slow data speed¹



Graph A-3 New complaints about both slow data speed and the information given at the point of sale



¹ This graph is based on annual report data. Any variance from quarterly complaint data is due to changes in classification.