

AUGUST 2007

GUIDELINES FOR BROADBAND SUPPLIERS

FAIR TRADING ACT 1986

PURPOSE OF THESE GUIDELINES

These guidelines will help broadband suppliers to better understand how to comply with the Fair Trading Act in promoting the sale of broadband services. It should be noted that while the Commission gives information about the Act, the Commission cannot provide legal advice about specific representations or specific promotions. Ultimately only a court can decide whether or not a representation breaches the Fair Trading Act.

BACKGROUND

More and more New Zealanders are using internet services. The number of companies offering these services has also grown. Technology continues to change and consumers can now use internet services in many different ways. The Commerce Commission has received complaints about the advertising of internet services particularly where consumers claim they have been misled about the nature, speed and/or price of internet services and where broadband suppliers have not properly disclosed all material terms and conditions of promotions.

THE COMMERCE COMMISSION

The Commission's purpose is to promote dynamic and responsive markets so that New Zealanders benefit from competitive prices, better quality and greater choice. The Commission is responsible for enforcing the Fair Trading Act 1986, which prohibits the use of false or misleading representations about goods or services. Breaches of the Act can result in prosecution and fines of up to \$200,000 per offence for companies or \$60,000 per offence for individuals.

THE FAIR TRADING ACT

The Commission's publication, The Fair Trading Act – A General Guide, is available as a downloadable PDF from the Commerce Commission's website, www.comcom.govt.nz, under Fair Trading Act publications. The purpose of the guide is to promote understanding of the Fair Trading Act, how it applies to both businesses and consumers, and the role of the Commerce Commission in enforcing the Act.

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ACCESS

Regardless of whether a broadband supplier uses a regional or national network, any limitations or restrictions on connection for customers should be made clear. Any problems or delays in providing service should also be made clear to consumers.

PRICE

The Act specifically prohibits false or misleading representations with respect to the price of any service. Price is an important consideration for consumers in making their purchasing decisions. If a broadband supplier refers to the price of the service, it should set out the full cost of that service.

The full cost of the service includes all fees and charges the consumer will incur. Set up costs, wiring or connection fees, for example, should be clearly set out.

Where obtaining another part, such as a modem or other hardware, is essential in order to receive the service, the cost of that part forms part of the cost of service. Consumers should be made aware that the price of the component will form part of the cost of the service - even if the broadband supplier does not supply the part. If it is necessary, for example, for a consumer to have a modem or a wireless adaptor to receive a particular broadband service that requirement should be made clear to consumers.

In relation to some internet plans the full cost of the service will depend on how much data the consumer downloads or uploads. Some suppliers will allow a consumer to download or upload a certain amount of data for free but will charge if more data is used. If a broadband plan is subject to a data cap the amount of that cap should be clearly disclosed to consumers and any charges for exceeding that cap should also be prominently displayed.

BUNDLING OF SERVICES

Some broadband suppliers require a consumer to buy another product or service in order to be eligible for a plan at a particular price. In these circumstances the fact that the consumer must purchase the bundled service should be made clear and the consumer should be told the cost of that service.

For example, any requirement that a customer obtain toll services from the broadband supplier in order to access an internet service at a lower cost should be clearly set out. If the consumer has to pay more for broadband if they do not take the tolls service as well, the additional cost should also be disclosed. If a customer has to spend a certain amount on tolls to receive a broadband service at an advertised price, this must be prominently set out in advertising material.

FAIR USE POLICIES

Broadband suppliers sometimes apply a “Fair Use” policy. Under these policies customers may have their service restricted if they use it excessively. Fair Use policies may mean that customers cannot use the service in the way that they want to. It is important that both the applicability and the terms of the policy are prominently displayed. The application of these policies should not be hidden in small print or in the general terms and conditions of service.

FREE

If something is advertised as free, it must be truly free. This means that there should be no extra cost to the customer above the normal price of the goods or services, whether up front or built into the price of the goods or services. For example, a supplier who advertises a broadband plan with a “free” modem must ensure that the cost of the modem is truly free and is not built into the price of the plan.

REPRESENTATIONS ABOUT SPEED

Consumers considering buying a broadband service are likely to take into account representations about broadband speed and performance before deciding to purchase broadband. It is important that these representations are accurate and do not give a false or misleading impression about the quality of the service.

Advertised download or upload speeds should be realistic and consistently achievable by consumers. They should not reflect theoretically achievable or maximum speeds as it is unlikely that customers will be able to get these speeds regularly given factors such as the customer’s distance from the exchange, the number of people using the service and the quality of the customer’s wiring. Broadband suppliers should have a reasonable expectation of

being able to provide services that they advertise. Representations that suppliers can provide speeds “up to” a theoretical maximum may breach the Fair Trading Act if that maximum speed is not realistically achievable by consumers.

Given current restrictions of the copper network that is used to deliver many broadband services in New Zealand, advertisements that give the impression that broadband speeds are unrestricted or unlimited (where the supplier is using this network) are likely to breach the Fair Trading Act. Representations that give the impression that restrictions on speed are limited to the quality of the customer’s line may also breach the Fair Trading Act, particularly if the supplier “throttles” the speed of the service in certain situations or reduces upload or download speeds in accordance with a “Fair Use” Policy.

FINE PRINT

With all advertising, the first or overall impression made on the potential customer is very important. People reading, seeing or hearing an advertisement can react to and make decisions based on that first or overall impression. If the overall impression given by an advertisement is misleading, it will breach the Fair Trading Act no matter what information is provided in fine print. If there are important limiting or qualifying conditions on a service, these should be shown in a bold, clear and compelling way in the advertisement which cannot be easily overlooked.

There are risks in assuming that consumers have a particular level of knowledge about broadband service plans. As many broadband services and products are new to consumers, advertisers need to take particular care to ensure that consumers understand exactly what they are getting.

MAKING A COMPLAINT

To contact the Commerce Commission about potential breaches of the Fair Trading Act:

telephone our Contact Centre during office hours on 0800 94 3600,

write to us at Contact Centre, Commerce Commission
PO Box 2351
Wellington, or

email us at contact@comcom.govt.nz

Prepare your query or complaint with as much relevant detail as possible – including your contact details, information about the trader or individual, and evidence of any suspected breach.