Fair Trading Act

Guidelines for the prepaid phone card industry

December 2012

These guidelines outline the Commission's view of how the Fair Trading Act applies to advertising of prepaid phone cards. It is designed to give prepaid phone card companies a better understanding of how to comply with the Act.

Prepaid phone cards are a convenient way to keep in touch, allowing people to pay in advance for local or international phone calls they intend to make some time in the future. They are readily available from a wide range of retail outlets including dairies and supermarkets, as well as over the internet.

Despite their popularity, prepaid phone cards have been the subject of consumer complaints both here and overseas. The most common complaint the Commerce Commission hears is that a phone card did not deliver the number of calling minutes that was either advertised or implied by prominent headline rates.

When consumers are faced with a number of phone card deals, they are likely to choose the one advertising the cheapest headline rate. Even if a consumer notices the fine print terms and conditions, it can be nearly impossible for them to work out what impact these will have on the headline rate. For that reason, the Commission's biggest concern is the use of unrealistic headline rates on prepaid phone card advertising.

It is not possible to set out a detailed prescription of when phone card advertising will breach the Fair Trading Act. However, these guidelines set out some general principles to give phone card companies an indication of factors that are likely to trigger a Commission investigation.

The headline rate statement

Headline rates are usually expressed in one of two ways:

- a per minute rate
- the total number of minutes a card can be used to call specified destinations.

In the Commission's view, it is best practice for a per minute headline rate to be an all-inclusive price. If the headline rate is expressed as the total number of minutes, then it should not be eroded by additional fees and charges. This is so that consumers can readily compare differing prices being offered.

While an all-inclusive price is preferable, you can still avoid making false or misleading representations by including any important additional information, such as additional fees or conditions of use, in the headline rate statement. Obviously, for space and readability reasons, this should be limited to one or two additional fees or conditions only.

Fees and conditions

If you use fine print to disclose fees and conditions that materially affect the headline rate, you are likely to breach the Fair Trading Act. This is because consumers are likely to get an inaccurate first impression of the total cost of making calls. Consumers should not have to carry out a mathematical exercise to calculate which card offers the best rate.

However, where there are additional fees or restrictive conditions that apply to some, but not all calls, it may be acceptable to keep these separate from the headline rate. How prominently you need to display these fees or conditions will depend on a number of factors, including:

- how significantly the fees or conditions impact the headline rate
- whether most consumers are likely to expect such fees or conditions
- the percentage of calls that the fees or conditions apply to.

EXAMPLE

A phone card company used poster advertising to promote a $10 phone card with 800 minutes calling time to India – the equivalent of 1.25 cents per minute. A customer made a 32 minute call and expected to pay 40 cents. In fact, after the fine print terms and conditions were applied, the customer was charged an additional:

- $0.10 – for an extra 8 minutes call time because calls were charged in 10 minute blocks
- $2.50 – a 50 cent surcharge every 6 minutes for the first 30 minutes
- $2.00 – a connection fee that applied after 4 minutes
- $1.00 – a disconnection fee that applied after 10 minutes
- $0.20 – a daily service fee each day after the call was made.

The true total cost of a 32 minute call was therefore $6.20 – more than 15 times greater than the advertised headline rate. The phone card company was convicted and fined $100,000 for this and similar advertising.

Fees and conditions that should be included in the headline rate statement

In the Commission's view, any fees or conditions that apply generally to anyone using the phone card need to be included in the headline rate statement. Examples of these types of fees and conditions include:

- Goods and Services Tax (GST)
- connection and disconnection fees
- charging in increments or blocks
- call time surcharges
- service or maintenance fees.

GST

Consumers are entitled to assume the advertised price to make a phone call includes GST. If you use fine print to disclose that GST is additional, you are likely to mislead consumers. In our view, it is best practice to include GST in the headline rate. However, if you are going to advertise GST-exclusive prices then this must be clearly and prominently disclosed as part of the headline rate statement.

> **EXAMPLE:** "5 cents + GST per minute to call Thailand."

Connection and disconnection fees

Some phone cards have a connection and/or disconnection fee for each call a customer makes. As these fees apply to all calls, you need to disclose them as part of the headline rate statement.

> **EXAMPLE:** "5 cents per minute to call Australia. All calls incur a 19 cent connection fee."

Charging in increments or blocks

Some phone card companies charge calling time in specific increments or blocks, such as 5 or 10 minute blocks. Consumers are unlikely to expect to be charged in blocks of time greater than one minute given the headline rate is often per minute. If you are charging in increments or blocks, you need to clearly disclose this in the headline rate statement.

> **EXAMPLE:** "2.8 cents per minute to call Australia. All calls charged in 5 minute blocks."

Call time surcharges

A number of phone card companies have imposed surcharges on calls that go over a certain number of minutes. Consumers are unlikely to expect this type of surcharge, and the fees can significantly impact on the credit available for making phone calls.

In our view, surcharges such as these should be included as part of the headline rate statement, unless they only apply after unusually long calls and are unlikely to be material to the cost of the call.

> **EXAMPLE:** "1.6 cents per minute to call Canada. All calls incur a surcharge of 10 cents after 30 minutes."

Service or maintenance fees

Some phone card companies charge service or maintenance fees, which they deduct from the first day the card is used. These fees are often charged regardless of whether the card is being used and are not actually linked to any service or maintenance of the phone card. We believe it is misleading to charge these fees because consumers have already paid for a specific amount of local or long distance calling time. However, if you are going to charge such a fee, you should include it in the headline rate statement.

> **EXAMPLE:** "4 cents per minute to call China. A daily service fee of 10 cents applies each day after first use."

EXAMPLE

A customer bought a $10 phone card and made one call to the United Kingdom which lasted around 20 minutes. The next month he tried to use the phone card again, but couldn't as there was no credit left on the card. When he contacted the phone card company, he was told that after making his first call, he had a credit balance of $9.38. However, this credit balance had reduced because a daily fee of 20 cents + GST was charged after making the phone call to the United Kingdom. The customer had not seen this fee on the poster or on the card itself and as he did not have internet access, he couldn't check the company's website. The phone card company was convicted and fined $140,000 for this and similar advertising.

Fees and conditions that only apply to certain calls

Some fees and conditions only apply to certain types of calls. For example:

- surcharges for calls from regional centres
- expiry dates
- payphones and mobile surcharges.

In the Commission's view, the above fees and conditions are less likely to come as a surprise to consumers. They must be clearly disclosed, but they may be disclosed separately from the headline rate statement.

Surcharges for calls from regional centres

Certain prepaid phone cards add extra charges when a call is initiated from smaller towns or cities. In our view, you must clearly disclose any surcharge of this type.

Expiry dates

Most prepaid phone cards have an expiry date. These vary from 30 days to 12 months from the date they are first used. We believe consumers are likely to expect to have at least six months to use their card, so you need to clearly disclose any timeframes shorter than this.

Payphones and mobile surcharges

Some phone card companies charge extra fees or surcharges for making a phone call from a payphone or mobile phone. If you do charge such a fee you must clearly disclose this.

Prices subject to change without notice

When you place advertising at retail outlets and on your website, your headline rates and fees and conditions of use must be accurate and up-to-date. In-store posters often include the statement "prices are subject to change without notice". While some headlined prices are likely to change at short notice due to the type of routes that are used, simply including this statement will not prevent consumers from being misled. If the advertised prices no longer apply, you must act quickly to provide retailers with up-to-date advertising. Any changes in the headline price should also be stated on your website at the same time that the higher prices apply. Any posters or websites continuing to advertise out-of-date prices are likely to breach the Fair Trading Act.

Liability of retailers

If advertising material for phone cards is misleading, anyone involved in the promotion of those phone cards may be at risk of breaching the Fair Trading Act. Retailers or online sellers who display misleading promotional material may be liable under the Act as well as the business that supplies that material.

Advertising material

When you are advertising phone cards, you need to make sure your advertisements give consumers an accurate impression of what is on offer, rather than relying on information available from a website or customer service representative.

When putting together advertising for phone cards, think about the type of advertising you're using and how you can best convey the key information consumers need to make an informed decision.

In print or online advertising, think of things such as the font type, the size of the text, placement and colour, as well as the background that will be used.

Where the form of advertising means it is difficult for consumers to process a lot of information (for example, a poster they will only glance at as they walk past a store) it is even more important that the initial impression conveyed is accurate. The overall impression created is a key factor when assessing whether there has been a breach of the Fair Trading Act.

The courts have indicated they will not take into account the space limitations of any advertising when deciding whether a particular advertisement is misleading. Each advertisement is a legal representation which must be able to stand on its merits.

Checklist

Consider the following when planning and reviewing any advertising:

- Is the message about the price clear, concise and accurate?
- Are the prices advertised in-store and on your website current?
- Are there any fees or conditions that affect the headline rate? Do these apply to most types of calls? If so, they should be included in the headline rate statement.
- Are there other fees or conditions of use that apply only to some types of calls? Are they likely to be expected by consumers? If so, these are less likely to be required to be included in the headline rate statement.

Complying with the Fair Trading Act

We have a range of resources available to help you comply with the Fair Trading Act. You can find them at **www.comcom.govt.nz/fair-trading**

Telephone:
Our Contact Centre during office hours on 0800 943 600

Write:
To us at Contact Centre, PO Box 2351, Wellington 6140

Email:
Us at contact@comcom.govt.nz