

Interaction between equivalence and non-discrimination

The equivalence and non-discrimination obligations under the Act and the deeds are **distinct and complementary requirements and may both apply to the same conduct by a network operator.**

Para 5.3

Non-discrimination and equivalence

A network operator may supply or price services on an equivalent basis, but the nature of the terms of supply may have a discriminatory effect on access seekers. For example, a network operator could meet equivalence but discriminate against access seekers by:

- packaging a service in a way that is only efficient to purchase if an access seeker's network is sufficiently similar to the network operator's;
- packaging a service in a way that discriminates against access seekers that also compete with the network operator's upstream service; or
- offering price or non-price terms that favour a particular access seeker (or its own downstream operations) based on the size or other characteristics of the access seeker's customer base.

Para 5.5

Note: This summary is intended as a quick reference only. For more detailed information, or to further understand the terms and concepts discussed here, please click the link indicated under the relevant paragraph to read our equivalence and non-discrimination guidance document, or visit www.comcom.govt.nz

Application of equivalence and non-discrimination

Services that are subject to equivalence and non-discrimination

Equivalence, in relation to the supply of a service, requires equivalence of supply of the service and access to the network operator's network so that access seekers are treated in the same way to the network operator's own business operations. Equivalence includes price and non-price terms.

Equivalence

The equivalence obligation applies to specified L1 services that network operators self-supply on the copper and fibre networks.

Para 2.40–2.44

Non-discrimination prohibits a network operator from treating access seekers differently, or if the network operator supplies itself with a relevant service, from treating itself differently from other access seekers. Non-discrimination includes price and non-price terms.

Non-discrimination

The non-discrimination obligation applies to all services supplied under the deeds on the copper and fibre networks, and services provided in relation to the rural broadband initiative (including L1 and L2 services).

Para 2.45–2.49

LOW TO HIGH RISK OF BREACH

Volume discounts

Volume discounts are an example of a price structure that might meet the equivalence obligation but could give rise to discrimination by creating a difference between access seekers.

A volume discount means that an access seeker that purchases a larger volume of services receives a lower per-unit access price.

Volume discounts may not necessarily be problematic if increasing the quantity supplied results in lower costs for the supplier, and that reduction is passed on to the customer in the form of a lower price. However, it must also be shown that the resulting price structure does not harm competition.

Para 5.11–5.13

Bundling

Bundling involves selling two or more services together in a predetermined ratio at a discount from the standalone price of the component services in the bundle.

Service bundling can have a discriminatory effect on access seekers, even if a network operator makes the service offer to all access seekers on the same terms.

Para 5.18–5.19

Non-price terms

The quality of the upstream service can be judged by the quality of the downstream service provided by the network operator.

For example, if it takes longer for an upstream input service to be provisioned than it takes for the downstream service to be provisioned, then this may be a breach of equivalence and non-discrimination.

Para 3.19 and 4.55

Loyalty rebates/ discounts

Loyalty rebates/discounts are a form of pricing structure that offers lower prices in return for the access seekers' agreement to purchase all or a large (or increasing) portion of their overall demand from a given network operator.

Loyalty rebates can result in lower prices that can benefit end-users, but if a difference in treatment is established, it will fall to the network operator to demonstrate that any loyalty rebates offered have an objective justification and are not likely to harm competition.

Para 5.14–5.15

