



Improving Retail Service Quality: Product Disclosure – Emerging Views Paper

Public Version

Commerce Commission

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Introduction

1. New Zealand has a competitive telecommunications market where customers have considerable choice of retailers and services. The market itself is made up of fixed and mobile networks and numerous companies operate at wholesale and retail level.
2. When it comes to choosing a service, consumers can have the choice of fixed broadband and mobile services offered over fibre, wireless/mobile, satellite, cable and copper networks. Services are offered at a range of prices and often include add-ons like subscriptions to streaming services or free consumer appliances.
3. Discounts often apply when purchasing multiple services from the same provider - whether that be bundling different services (such as mobile, fixed broadband and landline plans) or buying multiple mobile phone plans on a family account. More recently we have seen bundles including non-telecom elements such as electricity and gas.
4. Competition has driven great outcomes for customers and the Commerce Commission should be acknowledged for cultivating and supporting an environment where companies are able to innovate and differentiate their services.
5. In responding to the Commission's Emerging Views Paper, our principal submission is that the Commission should place paramount importance on protecting the incentives on mobile network operators and service providers to innovate and differentiate. We support Commission efforts to encourage transparency of offers and to improve consumer understanding of offers, but we recognise also that excessive prescription of offer constructs can inadvertently reduce innovation and differentiation. We believe that true competitive choice is the bedrock of our competitive markets and will continue to be fundamental as we deploy transformative 5G and then 6G technologies and services.
6. That is not to deny that choice does bring challenges. A high level of innovation and service differentiation can make it difficult for consumers to compare plans between providers on a like for like basis, especially when providers are not consistent in the information they make available to consumers about elements of their pricing.
7. The challenge is to create a market where consumers can easily compare between diverse offerings, without undermining innovation and stagnating the market.
8. We welcome the Commission's emerging views paper and the opportunity to explore these issues further.

Robust Framework For Developing RSQ Framework

9. We support evidence based policy making and welcome the Commission drawing on consumer research. However, the issues identified in the Commission's research, as

outlined in the Commission's Final Baseline Report (December 2021), were broad in scope and needed a deeper dive to tease out the underlying issues.

10. The Commission's Emerging Views report proposes a number of actions to address consumer harm based on the issues consumers were concerned about, but we suggest more work is needed to ensure these proposals will meet consumer needs.
11. For example, there's a risk that giving consumers too much information has the effect of reducing understanding of products, or that we choose the wrong metrics to highlight.
12. As most of these Retail Service Quality (**RSQ**) items are about making things clearer for customers we would strongly suggest a step in the process to test industry proposals using prototypes and receiving customer feedback (via workshops and surveys), before the rules are finalised.
13. We also suggest a phased approach, with broadband solutions being developed first, and once these are proven look at the benefits of rolling out similar pricing solutions to mobile services. This should enable a faster implementation for broadband, and we can use the learnings from broadband when developing a mobile solution.

Support industry lead approach

14. We agree that an industry led process is the best approach to address product disclosure issues. The TCF process for creating the TCF Broadband Marketing Code and Copper and PSTN Transition Code generally worked well, and we believe the Code has produced a good outcome for consumers.
15. However, it is important industry is given appropriate time to consider, debate and agree potential solutions to problems. Code development is iterative, and the full timeframe needed for this process may not be apparent initially. We are committed to working closely with the TCF and the Commission to develop Codes which address the underlying concerns.

The new rules must have widespread take-up

16. The purpose of product disclosure is to ensure consumers have consistent information about plans and services so they can make fair comparisons between providers.
17. If only a subset of providers sign up to the Codes then these providers are disadvantaged as they face the compliance burden avoided by other market players.
18. It's important therefore that the new rules apply to all providers who offer services to consumers in New Zealand to ensure a level playing field.

Fair Trading Act Concerns

19. As we get into the details of the remedies, we suspect there will be tensions to resolve in some areas between what the Commission is asking for, and our obligations around transparency and accuracy under the Fair Trading Act. These issues will need to be resolved as they emerge as ultimately the law will take precedence.
20. We also risk of overloading customers with information which will have diminishing returns, particularly if long disclaimers need to be presented or read out as part of the buy journey. These are in addition to information presented in our product offer summaries or as part of our product descriptions (eg information about speed as per the TCF Broadband Marketing Code etc).
21. Some combinations of our existing disclaimers are nearly [] words long which can take around [] minutes to read. If additional information is to be disclosed as part of a sales journey then this will take even longer.
22. Our existing disclosures include:
 - a. Information on data allowances and costs for broadband
 - b. Average speeds and speed expectations for broadband
 - c. Issues affecting speeds for broadband (with additional information for wireless customers)
 - d. The impact of the new plan on existing credits and discounts
 - e. Information on national and international calling for landline customers
 - f. Information on whether a modem is required and modem cost (or if included in the plan), plus any postage and handling fees, interest free payment options and whether the customer can bring their own device for broadband
 - g. Information on installations for customers requiring an external antenna for their fixed wireless service due to their geographic location, and the need to get landlord's consent
 - h. Information about installations and fees for fibre customers and billing for additional changes like extending the customer's network
 - i. Information about the vulnerable consumer scheme for landline customers. This includes information about the scheme, a recommendation to have another means a way to contact 111 during a power outage and how we'll provide a device for vulnerable consumers.
 - j. That we'll never refuse to provide a landline to vulnerable consumers just because they are 'vulnerable'
 - k. That complaints about the Vulnerable Consumer process can be escalated to TDRS

- l. It is the customer's responsibility to check if their medical or security alarm will work over fibre
 - m. Services are not guaranteed until connected
 - n. Information about the customer's notice period if they want to cancel their service
 - o. That standard Spark terms and conditions apply and where to find them on our website
 - p. That standard Spark privacy policy applies and where this can be found on our website
 - q. Some wording around moving between products where the billing period changes
 - r. Information about the terms of the contract and what happens to outstanding interest free payments, and what (if any) early termination fees apply (depends on the term of the contract)
 - s. Information specific to outbound calling and the legal right to cancel
 - t. If the service requires a home visit, information about health and safety
 - u. Information on interest free payments for those that take them
 - v. Information on mobile data costs for mobile customers
 - w. Information on terms and conditions for mobile customers
 - x. Rights to cancel, timeframes and restocking fees for mobile device purchases
 - y. Early termination fees for mobile customers
 - z. Information on included products including how these should be activated and what it means for any existing payments to those companies.
23. This is a considerable amount of information for a customer to absorb in a short time, but is required by our legal and regulatory obligations.
24. We strongly caution against adding to the list of information customers must read before making purchase decisions. It is a lot already to ask customers to sit through so many disclosures.

RSQ Must Be Balanced Against Market Dynamics / Commerce Act Concerns

25. There is a risk that RSQ regulation, when taken too far, can extend into retail service design and undermine competition. The tighter RSQ and product disclosure are defined the less opportunities RSPs have to differentiate their services and disrupt the market with new approaches. The Commission needs to be sure it is not undermining the level of market innovation created by competition.

26. Coupled with this, industry needs to be mindful of the Competition Act risks when designing Codes to address product disclosure as they will be addressing issues of how pricing and product constructs are communicated. While industry conversations will be limited to the *presentation* of product information there is a risk that proposals could restrict the level of competition in the market. Industry will need to be alive to these risks and may need to take legal advice on some aspects of the Code development.
27. Industry will need time to work through these issues, if they emerge. This is another reason why Code development should not be rushed.

Implementation Ahead Of Code

28. The devil will be in the detail of each of the RSQ issues and they will take time to implement. One lesson we learnt from the Broadband Marketing RSQ work is that it is not trivial, cheap or easy to change information about our products or services, particularly where they require structural change to our website or marketing collateral.
29. Even small changes can require significant resource which takes away from other work such as process improvement and product development.
30. If changes are required then they should be done just once.
31. The goal should be that we should be consistent in how we talk about products and services across the industry. If retailers start to implement RSQ solutions based on our best guess of how things might turn out then this goal won't be achieved as we'll implement things in different ways, and our product descriptions will not be comparable.
32. It's important to keep the cost of regulatory compliance reasonable as these flow through into higher costs to operate our business and ultimately higher costs for all consumers. As an example of the cost of regulatory compliance, we estimate the cost of implementing the 111 Contact Code has been in excess of [\$]. This does not include significant ongoing costs to support the process.

Item 1 – Comparing Prices

33. There may be an underlying assumption in the Commission's product disclosure work that charging customers over 28 days rather than a calendar month is misleading. Customers have told us they like the certainty of a payment cycle based on weeks rather than months as it fits their salary cycle, and helps their budgeting. For these customers 28 days, or even weekly payment (as offered by Skinny prepay plans) is preferred over monthly charging so the payment date does not drift from their salary payment date.

34. However, we recognise it is useful to be able to easily compare prices over a standard period of time. The Commission has chosen monthly cost, but it could alternatively choose a standard 28 day period.
35. Item 1 relates to **average monthly cost**. This is calculated as the cost of the core services supplied to the consumer over a standard amount of time (eg 24 months), divided by the number of months to get an average monthly cost. The cost would include core services supplied but excludes add-ons that are charged separately.
36. Our initial thoughts are 24 months may be an appropriate period of time to calculate over, as it means any initial discounted prices are averaged out over the longer period, but recognises people don't stay with their existing provider forever.
37. However, if the Commission elects to use this term (or any term in fact) it needs to acknowledge that the estimated average monthly cost will not be accurate for all customers. A customer who signs up to a 12-month contract, for example, may leave any time after 12 months, in which the 24-month calculation will be inaccurate for that customer. Some customers may change contract term during the contract which further complicates the calculation.
38. The Commission's proposal also risks stifling pricing innovation – for example it does not easily fit plans where the monthly rental price is determined by the customer's data usage tier that month.
39. Ensuring providers have certainty of Commission treatment of the overlap between RSQ Codes and the Fair Trading Act will be critical to building confidence in this area.
40. The examples given by the Commission show each retailer can still use their own headline messaging about plans, provided they also include the average monthly cost prominently in their plan cards. We think this is a sensible approach as it still allows providers a degree of differentiate in how they position their products: A provider could still offer a weekly or even daily charge for their broadband as the headline rate.
41. Some issues will require further exploration, including:
- a. Prices for a product can change when multiple products are bought from the same provider. For example, Spark has 'team up' for its mobile plans where the discount depends on the number of people added (the discount is 20% when one additional person is added, 30% for two, or 35% for three or more people). It is unclear how this would be shown on the plan cards
 - b. Modems can be optional, but the RSPs latest modems are often needed to get the best performance from a plan. In addition, for Spark at least, modems can be purchased up front, over 12, 18, 24 or 36 months¹. As these are standalone options we assume they would be excluded from the average

¹ <https://www.spark.co.nz/help/account/bill/interest-free-payments-billing/>

monthly charge, but would be displayed as a separate price under some of the other RSQ issues? We discuss this further below.

Item 2 - Comparing Total Costs

42. We agree it is good to be transparent about the range of costs. However, the challenge is in the practicality of distilling the key elements on to a standard template:
- a. Monthly cost should be the same as Item 1 above.
 - b. It is useful to separate out one-off setup costs such as modem costs (especially as these can be spread over different IFP periods) and any installation/device postage costs. To avoid a long list of items, some costs could be included under a general heading of 'other'.
 - c. Retailers will not be able to tell consumers at the point of sale if there will be any non-standard installation charges and, if there are, what those charges are given they are largely determined by third parties (the local fibre company for example) and are dependent on the customer's unique circumstances (which is why they are non-standard). We suggest that the point-of-sale disclosure be a high-level statement such as "Non-standard installation fees may apply if the services have not previously been delivered to your address".
43. The total minimum cost is a more complex issue. The example shown in Figure 2 shows an open term plan, but because the modem is on IFP for 24 months, the total minimum cost is calculated over 24 months. This is potentially misleading for customers who buy their modem up front (their total cost will be one month's rental plus the one-off costs), or take their modem IFP over 12 or 18 months as the displayed cost will be too high. It's also misleading for customers who pay their modem on IFP over 36 months as their total minimum costs would be higher.
44. To show the difference, the table below shows the hypothetical example of a \$100/month broadband rental with an optional \$150 modem. The Total Minimum Cost assumes the cost over the IFP period (or one month if the modem is bought outright). Whichever option they choose for their IFP, they still need pay the modem off in full if they leave the service early, but they still have the same open term notice period so practically there is no difference between any option where the customer buys a Spark modem. It would be confusing to show 5 (or more) different minimum costs for the same product
45. We therefore suggest that modem costs are treated as one-off costs, and the IFP term is not taken into account when calculating the minimum contractual period for the Total Minimum Cost (particularly as the Spark IFP term does not change the amount a customer has to pay in total for their modem as there is no interest

charged²).

	Rental	Modem Cost	Total Minimum Cost
No Modem (open term)	\$100	\$0	\$100
Modem upfront	\$100	\$150	\$250
Modem 12 months IFP	\$1,200	\$150	\$1,350
Modem 24 months IFP	\$2,400	\$150	\$2,550
Modem 36 months IFP	\$3,600	\$150	\$3,750

46. As noted earlier, multi-product discounts, such as linking multiple accounts or bundling products can also impact the total minimum costs. It's unclear how these should be accounted for.
47. Even in relatively simple products we sometimes sell open term and 12 month term variants of the same plan. This could create very complicated matrixes of prices for each plan.
48. The alternative is to calculate the minimum cost 'on the fly' based on options the customer has chosen. This would require significant amount of development resource to create as this is not how our websites work at present. Even if it were possible, we would still need to agree the logic behind the calculation.
49. Given the complexity in calculating this "minimum cost" concept, and in making it comparable across different plan options, we query whether it will provide customers with useful information – we recommend dropping this concept and focussing instead on the monthly cost estimate.

Item 3 - Comparing Plan Inclusions

50. Our approach has been that the offer summary is essentially a contract with customers and covers the same key issues as our product terms. Spark and Skinny use the TCF offer summary template as a way to structure our contracts. We feel this meets the requirement of both the Code and our legal contractual obligations, and avoids consumers having to deal with two separate documents.
51. Two pages is an unnecessary practical limitation to capture everything in an offer summary. The existing TCF broadband product disclosure template can stretch over 2 pages once populated with the information required. To fit it to two pages would require us to reduce the font size and risks making the document unreadable. Offer summaries can be considered legal documents because they are a summary of the key facts for consumers. It is challenging to restrict this information to a certain size of document.
52. The challenge is to create a summary which includes enough to avoid misleading customers without overloading them with information. We can link to other

² <https://www.spark.co.nz/help/account/bill/interest-free-payments-billing/>

documents in our offer summaries, but this may defeat the point of having everything together in one document.

53. We are interested in the decision to extend the offer summary construct to mobile services. Mobile service can be more complex than broadband services and creating an industry template for charging structures may either restrict how retailers price their products or create practical challenges as retailers innovate in how they construct their plans which don't neatly fit the agreed approach.
54. This is especially the case for pre-pay mobile plans which customers purchase on an ad hoc basis over a period of time. Given the nature of pre-pay plans we think mobile should be excluded from the initial proposal. The applicability to mobile (both post and pre-pay) can be reviewed later.
55. The Commission notes that the format of offer summaries is of concern. We make our information available on our website today. This means the information is easily accessible and can be easily cut and pasted. If someone wants a pdf version of the document they can 'print as pdf' from the webpage.
56. Most broadband offer summaries need to be updated at least quarterly as new MBNZ speeds are published. Practically, it is considerably more work to update a pdf than a website page.
57. The key thing is that customers should be able to access the same information from all providers in a consistent structure. We suspect the amount of customers who would print off pdfs of the information and compare side by side is very small.
58. This is an area where we definitely need to test proposals and designs with customer groups before finalising the regulations.

Item 4 - Comparing Bundle Pricing

59. We support the concept of providing a check list of bundled items, together with their standalone prices in principle, but are concerned about the practicalities and the likelihood of information overload for consumers.
60. The practical challenges include creating a table for every plan, especially different bundles are possible as optional add-ons. We suggest it may be more appropriate in some cases to have the information on standalone pricing linked elsewhere rather than on the plan page, not more than one click away. It will create considerable work to include these tables as part of the core journey.
61. There is a risk that the comparison charts become out of date as the standalone retail prices for products change without us knowing. We do not constantly monitor the retail markets, or keep a track of standalone discounts, for third party products so there is a risk that our table of unbundled prices may be misleading for consumers.

62. It's also unclear what prices we would use for third party products. While services like Netflix or Spotify have a standard retail charge, hardware items (fridges, televisions etc) can often be widely available at lower prices.
63. If the consumer concern is that they are paying *more* for bundled products than their standalone products, then this issue could be amended so that RSPs only need to publish the unbundled price for products where the bundled prices *is the same or more expensive* than the recommended standalone retail price.
64. This would capture the electricity pricing example given by the Commission, but potentially avoids providers who offer discounted subscriptions to online services from needing to constantly keep a comparative pricing table up to date.

Item 5 - Comparing Customer Numbers

65. We were surprised by the inclusion of this issue in the emerging views paper. We have seen no evidence that customer number calculation is a concern for consumers or material for consumers' purchase decisions. It was not mentioned in the Commission's baseline report and we are not aware of providers using customer numbers to promote their service.
66. To move to the ITU definition would require us to update our measurement methodology, our internal dashboards and our external reporting, and to restate the prior period in our public reporting.
67. If the Commission decides to go ahead with this item, then the best approach would be to set a date at some point in the future where public reporting needs to use the new methodology so industry each has time to prepare.
68. However, we question whether change is necessary from a customer perspective and would like to see more evidence of the current harms felt by consumers.

Item 6 - Comparing Mobile Coverage

69. We agree it would be useful to have consistent coverage maps between providers so consumer can make informed purchasing decisions. While we think more consistency can be achieved between operators, it is unlikely they can ever be made completely comparable.
70. Coverage maps today are simply an indication of likely coverage and cannot be considered a guarantee that service will be available at that address. The best way to determine the level of coverage at a location is to try it - ask friends or family who are on a different mobile network how many network 'bars' show on their phone when they visit. This gives a real-world indication of actual coverage rather than a theoretical model based on a set of assumptions. Even this has challenges - different manufacturers take different approaches to how they show network 'bars' on their devices, again pointing to the difficulty in alignment over network quality.

71. Mobile coverage maps are not an exact science. They are an estimate of the level of coverage based on a complex algorithm which uses a range of variables to estimate likely signal propagation. Factors such as the terrain, vegetation, building density and materials can all impact the level of service someone can receive when standing outside. Coverage is further complicated for indoor coverage where in home signal propagation and home layout can influence performance. The location of the modem in the home can be key to whether a customer gets a great or average service.
72. Even if some of these variables could be agreed between operators there will always be differences in our estimates of propagation as we all use different frequencies.
73. Algorithms can also vary between technology - Spark has 3G, 4G, 5G mobile coverage information as well as 4G and 5G fixed wireless coverage information, each of which has its own set of variables to decide where services are available.
74. Despite these differences in the underlying methodology there could be an opportunity for the three mobile network providers to agree on the number of steps and nomenclature for the steps at industry level. This may be superficial but would provide a little more guidance to customers than the current approach where the providers are not aligned in how they refer to their performance steps.
75. We support the concept of a single website showing a combined industry map of coverage - with each provider supplying their own coverage maps to the site. We think the NZ Broadband map offers a good model, subject to certain improvements. It is important that the map does not mislead customers in the level of coverage so care will need to be taken around implementation, including making sure there are appropriate disclaimers on how the maps should be interpreted.
76. We have begun to engage with industry through the TCF to see what, if anything, it is practical to align on.
77. Whatever we come up with will require clear disclaimers, caveats and health warnings on how the data should be interpreted to ensure we are not misleading customers from a Fair Trading perspective.