

10 August 2017

Vodafone New Zealand Limited
74 Taharoto Road,
Takapuna,
Auckland, 0622

By email to: [REDACTED]@vodafone.com

Attention: [REDACTED], Lead Counsel

Dear [REDACTED],

Fair Trading Act 1986: Warning

1. The Commerce Commission has been investigating the conduct of Vodafone New Zealand Trading Limited (Vodafone) under the Fair Trading Act 1986 (the Act). We have now completed our investigation and write to alert you of our concerns.
2. In summary, the Commission considers that Vodafone is likely to have breached the Act by making misleading representations when it promoted its 12 month broadband plans during 2016.
3. Vodafone's conduct is identified in detail at paragraphs 13 to 25 below. Broadly, during 2016, Vodafone advertised several 12 month broadband plans bundled with a number of 'free' included goods and/or services. In fact:
 - 3.1 In order to receive some of the 'free' goods and/or services, the consumer needed to pay additional fees and, at times, needed to sign up and pay for additional services; and
 - 3.2 On some occasions the bundled plan was advertised by reference to a monthly headline price which did not include the additional fees to be paid in order to receive the 'free' goods and/or services.
4. The Commission's view is that a number of the advertisements for these plans were likely to have been misleading to consumers regarding the price of the advertised services.

The investigation

5. The Commission began investigating Vodafone after receiving a complaint about Vodafone's conduct.
6. Our investigation focussed on Vodafone's broadband bundled offers, particularly those including the offer of one or more of:
 - 6.1 a free modem or a free upgrade requiring a modem;
 - 6.2 free SKY Sport or SoHo;
 - 6.3 free Neon or SoHo; and/or
 - 6.4 free MYSKY.
7. The investigation centred on the advertising from television commercials (TVC), print media, instore signage, web based advertising and letters to consumers.
8. Vodafone has cooperated with the Commission throughout the investigation by providing us with copies of all the advertising material, and attending an interview with Commission staff.
9. In its written responses and at interview, Vodafone indicated that:
 - 9.1 it believed that it was supplying the modem free as it did not cost the consumer anything except the post and packaging; and
 - 9.2 it believed that all costs that were to be incurred in the offers were adequately disclosed and appropriate for the medium used.
10. Vodafone advised that it acknowledged that one television commercial had initially not included any reference to the need to sign up to Sky Basic, in order to receive the 'free' SoHo offer. This had aired for only five days before Vodafone had replaced it with an updated version, which had made the requirement clear.

The Commission's view

11. In this case, the Commission's view is that Vodafone's conduct is likely to have breached the Fair Trading Act.
12. After considering the factors set out in our Enforcement Response Guidelines¹, we have decided to issue this warning letter to assist Vodafone to meet its statutory obligations.

¹ Available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

Broadband with “Free Sky Sport” bundle

13. Between 13 January and 31 October 2016, Vodafone promoted a “Free Sky Sport” 12 month broadband plan offer (Sky Sport Bundle Offer). At times, this Sky Sport Bundle Offer was promoted using a fixed monthly price and with ‘free’ Sky Sport. At other times, the Sky Sport Bundle Offer was promoted without reference to price but with an option to receive either free Sky Sport or free SoHo.
14. In promoting the Sky Sport Bundle Offer, Vodafone represented that consumers who signed up to the 12 month broadband service would also receive:
 - 14.1 12 months free Sky Sport (or SoHo);
 - 14.2 a free modem;
 - and/or
 - 14.3 a free upgrade to MYSKY.
15. In fact:
 - 15.1 to receive Sky Sport (or SoHo), the consumer was required to sign up for Sky Basic at an additional cost of \$49.91 per month;
 - 15.2 to receive a free modem, the consumer was required to pay \$14.95 postage and packaging to have the modem delivered; and
 - 15.3 during the initial period of the promotion, in order to receive the ‘free’ upgrade to MYSKY, an existing customer would need to pay a \$99 installation fee.
16. Section 13(g) of the Act prohibits any person, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, from making a false or misleading representation with respect to the price of any goods or services.
17. The Commission’s view is that consumers who saw some of Vodafone’s various Sky Sport Bundle Offer advertisements between 13 January to 31 October 2016 may have formed the impression that, on signing up to the Sky Sport Bundle Offer, they would receive:
 - 17.1 The Sky Basic service at no additional cost, when consumers were required to pay an additional cost of \$49.91 per month: and/or
 - 17.2 a modem at no additional cost, when in order to receive the modem, they would need to pay a postage and packing fee of \$14.95; and/or

- 17.3 an upgrade to MYSKY at no additional cost when, during the initial period of the promotion, in order for an existing customer to receive the upgrade, they would need to pay a \$99 installation fee.
18. The Commission's view is that the Sky Sport Bundle Offer advertisements were likely to mislead consumers about the price of the advertised services in breach of Section 13(g) of the Fair Trading Act.

Broadband with "Free Neon or SoHo" bundle

19. Between 1 April and 31 May 2016 Vodafone promoted a "Free Neon or SoHo" 12 month broadband plan offer (Neon/SoHo Bundle Offer). The offer was advertised widely, including by television commercial.
20. In promoting the Neon/SoHo Bundle Offer, Vodafone represented that consumers who signed up to the 12 month broadband service would also receive 12 months free Neon or SoHo.
21. In fact, to receive SoHo, the consumer was required to sign up for Sky Basic at an additional cost of \$49.91 per month.
22. As stated above, Section 13(g) of the Act prohibits any person, in trade, from making a false or misleading representation concerning the price of goods or services.
23. The Commission's view is that consumers who saw or heard Vodafone's Neon/SoHo Bundle Offer advertisement between 17 and 21 April 2016 may have formed the impression that, on signing up to the Neon/SoHo Bundle Offer, they would receive SoHo at no additional cost, when in order to receive SoHo, they would need to also subscribe to Sky Basic at an additional cost of \$49.91 per month.
24. The Commission accepts that Vodafone identified this lack of disclosure and replaced the television commercial with a version which included a reference to the need to subscribe to Sky Basic.
25. The Commission's view is that the initial Neon/SoHo Bundle Offer advertisement was likely to mislead consumers about the price of the advertised services.

Concluding Comments

26. The Commission has publicly stated that retail telecommunications will be an organisation-wide priority for the 2017/2018 year.
27. We encourage you to regularly review your compliance procedures and policies.
28. While we will not be taking any further action against Vodafone on these matters at this time, we will take this warning into account if this conduct continues or if you engage in similar conduct in the future.

29. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Vodafone.
30. This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.
31. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

32. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
33. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

Further information

34. We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
35. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
36. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED]@comcom.govt.nz if you have any questions about this letter.

Yours sincerely

Ritchie Hutton
Head of Investigations – Competition Branch