

15 October 2024

By email to: Mobile Stakeholder Group
Broadband Stakeholder Group
Consumer Stakeholder Group

Tēnā koutou

Broadband Marketing Guidelines – Progress Review

Background

1. In November 2021, we issued the *Marketing alternative telecommunications services during the transition away from copper Guidelines* (the **MAS Guidelines**) to the industry under s 234 of the Telecommunications Act 2001 (the **Act**).
2. The MAS Guidelines were designed to address concerns relating to the marketing of broadband services to consumers coming off copper by ensuring that:
 - Consumers get sufficient notice of any change to their copper service so that they are not rushed into making decisions about a replacement service; and
 - Consumers are informed about the full range of options available to them when being presented with offers to move to a replacement service.
3. The MAS Guidelines also sought to improve broadband marketing more generally by ensuring that:
 - Consumers are told how different broadband services are likely to perform, particularly in terms of speeds, which must now be based on independent testing under the Measuring Broadband New Zealand (**MBNZ**) programme (rather than “up to” or theoretical maximum speeds);
 - Consumers have the right to walk away from their broadband plan or provider, without penalty, when a service materially fails to deliver what was advertised; and
 - Consumers know where to go for the prompt resolution of any issues associated with the marketing or performance of their broadband service.
4. We were pleased with the positive response from retail service providers (**RSPs**) who moved quickly to comply with the MAS Guidelines to help resolve the issues we had identified.

5. Consistent with our commitment to reviewing the results of our retail service quality work, we recently completed a review of the MAS Guidelines, including the impact they have had in the period since they were introduced.
6. Overall, our review found that the MAS Guidelines have improved marketing conduct and outcomes for consumers, but also identified opportunities for further clarification and improvement.
7. We propose to address these opportunities for clarification and improvement through amendments to the MAS Guidelines.
8. We are interested in your views on the results of our review, including the amendments we have proposed, before revised Guidelines are issued to the industry under s 234 of the Act.

Review of the MAS Guidelines

9. Our review took the form of an audit of major providers and a representative sample of smaller providers for compliance with the key requirements of the MAS Guidelines.
10. We also looked at the incidence of consumer complaints to the Commission in the areas targeted by the MAS Guidelines.
11. Our review covered a period of approximately three years since the MAS Guidelines were first issued.
12. Overall, we found a generally high level of compliance across the industry and concluded that the MAS Guidelines have been effective in shaping broadband marketing conduct to better meet the demands of end users.
13. The table below summarises our findings in the key areas targeted by the MAS Guidelines:

Area	Summary
Consumers are given appropriate notice of any change to their copper-based services and should not have to make decisions under pressure.	Consumers are now getting at least four months' notice from RSPs.
Consumers are made aware of the range of alternative telecommunications services available to them as they transition off copper-based services.	Consumers are now being made aware of the range of services from RSPs.
Consumers are given clear, accurate and up-to-date information about the technical performance characteristics of different broadband services.	Consumers are getting better performance information with major providers using MBNZ upload and download speeds – but speed indications are sometimes not being given for wireless broadband

	services (despite being available under MBNZ).
Consumers have an “exit right” when their broadband service materially fails to deliver advertised speeds.	Consumers now have an “exit right” with most providers – but there is no consistent approach to the “materially fails” test.
Consumers know where to go for the prompt resolution of any issues associated with the marketing or performance of broadband services.	Consumers are getting better information about how to raise and resolve issues – but it can be hard to find this information on RSP websites.

14. Consistent with this progress, complaints to the Commission about copper withdrawal have fallen by 36% since we introduced the MAS Guidelines (comparing the 12 months to March 2022 against the 12 months to September 2023). Over the same period, copper withdrawal complaints as a percentage of total telecommunications complaints to the Commission fell from 7% to 3% of all complaints.
15. Our review also highlighted room for improvement in the following areas:
- 15.1 *Title and structure of the MAS Guidelines:* The title and structure of the MAS Guidelines may have caused confusion for some RSPs. For example, RSPs who do not sell copper services often assumed (because of the reference to “copper” in the title) that the Guidelines did not apply to them, and so did not engage with them further (until prompted to do so by our review). To address this issue, we propose to rename the Guidelines as the “Broadband Marketing Guidelines” and split them into general marketing and copper withdrawal related sections.
- 15.2 *Marketing of broadband speeds:* While most RSPs now advertise using MBNZ speeds, some RSPs do not include speeds for wireless broadband services, even though MBNZ speeds are available. To address this issue, we propose to clarify that MBNZ speeds should always be included when advertising any service where MBNZ results are available, so that consumers have a clear view of the likely actual performance of all services.
- 15.3 *Broadband usage and spend information:* Not all RSPs are giving their customers the information they need to be able to determine whether they are on the best plan for their usage and spend. We are concerned that this could reinforce inertia in the residential broadband market. To address this, we propose to clarify that RSPs should ensure consumers have access to usage and spend information over a minimum period of 12 months. We also encourage RSPs to provide an annual summary of usage and spend along with

a prompt for consumers to consider whether they are on the best plan for them.¹

- 15.4 *Transparency of contact information:* It can be hard to find information on how to raise and resolve issues on RSP websites. Some RSPs only have this information in their offer summaries. While it is relatively easy to find the 'contact us' page on RSP websites, it is not always clear whether a consumer should make an inquiry or complaint through those channels. To address this issue, we propose to require more prominent disclosure of broadband help and complaints contact information.
- 15.5 *Incentive structures:* Some RSPs are incentivising their sales staff differently for different technologies. We are concerned that this may give rise to a risk that consumers could be sold technologies that do not fully meet their needs. RSPs should have appropriate policies in place to guard against this and remedy the situation if it occurs.
- 15.6 *The definition of materially fail:* Most RSPs now allow consumers to exit or move from their service if it materially fails to meet expected requirements. However, the "materially fails" test is applied differently across RSPs, resulting in inconsistent consumer outcomes. To address this issue, we propose to standardise materiality thresholds, by reference to best practice across major providers.

Next steps

16. We propose to amend the MAS Guidelines to address the issues identified in our review and reissue them as the Broadband Marketing Guidelines 2024 (**the Guidelines**).
17. We have published alongside this letter our more detailed review report and draft amended Guidelines for comment. We are interested in any comments you may have on our report and any specific drafting comments you may have on the draft Guidelines. Please be sure to provide reasons for any comments or drafting suggestions you put forward.
18. Our expectation is that RSPs will correct their conduct, where required, to comply with the amended Guidelines within six months of the amended Guidelines coming into force. We also expect the Telecommunications Forum (**TCF**) to flow through any changes required to relevant industry codes within the same timeframe.
19. Prompt compliance with the amended Guidelines will – as with the positive response to the initial Guidelines – avoid the need for the Commission to consider using its code-making powers to improve outcomes for consumers in this area.

¹ We recently found that sufficient competitive pressure likely exists in the mobile market for RSPs to continue improving the information and tools provided to consumers to understand their usage and spend (see Commerce Commission, *Mobile Transparency – Progress Review*, 6 June 2024). We propose to monitor the market to see whether similar pressures exist for broadband customers before taking the further step of requiring RSPs to provide annual summary letters.

20. If we see widespread compliance across the industry, but ongoing non-compliance by some providers, we would consider using the Commission’s Fair Trading Act powers to close the compliance gap.
21. We will be consulting as follows:

Steps	Dates
Draft guidelines published	15 October 2024
Submissions on the draft guidelines due	6 November 2024
Final guidelines published	December 2024

22. Submissions can be emailed to market.regulation@comcom.govt.nz by 6 November 2024, with “**Broadband Marketing Guidelines**” in the subject line.
23. If you have any questions in relation to this letter, please email market.regulation@comcom.govt.nz, for the attention of Andrew Young, Retail Service Quality Manager.
24. We look forward to receiving your feedback and thank you for your ongoing engagement with our work.

Ngā mihi nui

Tristan Gilbertson
Telecommunications Commissioner