

Tuatahi First Fibre submission on the Broadband Marketing Guidelines

13.11.2024

Introduction

Tuatahi appreciates the opportunity to provide feedback on the *Draft Broadband Marketing Guidelines 2024* (draft guidelines). As a wholesale supplier of Fibre broadband services, the guidelines provide an important framework for ensuring consumers are easily and accurately able to ascertain information about their broadband options.

For the wholesale-retail separation of the Fibre network to work effectively, Fibre must be represented to consumers in a fair and comparable manner to the other alternate technologies available in the broadband market.

As such, we support the majority of changes outlined in the draft guidelines and see them as beneficial changes for the consumer, further strengthening the reputation of the sector. The broadband market is continually evolving in a post-copper landscape, with alternate technologies having entered and still entering the market, it is appropriate for the guidelines to be tweaked to adapt to the various technologies now on offer.

The original guidelines were put in place at the time of widespread copper withdrawal due to the roll out of the Fibre network. At that time, 5G and LEO Satellite services were not available, so there has been a significant increase in broadband options to be taken into consideration when considering how consumers are informed.

We are encouraged by the Commissions review and recommended changes to several key areas of the guidelines which have been a concern for Tuatahi, due to the potential for consumer confusion caused by inaccurate representations about other technologies. We support a requirement to always use MBNZ speeds in appropriate marketing, and a threshold for material failure. Both changes will improve the ability for effective comparisons to be undertaken by consumers which consider both price and performance.

Response to specific items in the consultation document

We are support renaming the guidance document to “Broadband Marketing Guidelines” as this better reflects the purpose of the code. Commentary on the changes to specific parts of the code is contained below.

Part One – General

We are supportive of all changes proposed to Part One of the draft guidelines, except the following:

1. Definition of “Broadband”

The proposed definition is currently “a network service or connection providing ‘always on’ access to the internet”, which we believe could be open to interpretation and not capture all services that are offered as broadband to consumers. For example, it is not clear whether a de-prioritised LEO satellite service would be captured by this definition. We suggest that further consideration is given to ensure all services are captured.

2. Definition of “personas”

The definition of “personas” differs from what is currently in the TCF code for the Marketing of Broadband Services, but does not seem materially different. We suggest that for ease of industry code adaptation, the TCF code definition be used.

Part Two – General Broadband marketing guidelines

We are supportive of the majority of the changes to part two, with a couple of exceptions.

Outcome 1: “Consumers are given clear, accurate and up to date information about the technical and performance characteristics of Broadband services.”

There are quite a few new principles and guidance contained in this section. Our feedback on these is as follows:

1. **New principle (b) “RSPs should tell consumers what technology options are available at their address from that RSP when joining or switching Broadband services or technologies”**

We are supportive of this amendment, as it provides clarity that consumers should have information on what services are available at their premise available to them when considering their options. It is also important that the consumer understand any performance constraints at this point as well, so ask the Commission to consider how this can be addressed.

We suggest an explanatory comment for this principle could be useful to ensure the correct and consistent application of this principle by retailers, as it may be difficult to apply in all customer switch/joining interactions. Particularly where a consumer has pre-determined the service they want, or has a pre-existing relationship with a retailer that may incur additional cost for that consumer if they choose a different product (such as the loss of discounted prices for additional mobile, data or streaming services). But we see it as particularly useful guidance for retailer collateral and website marketing, or a check that a consumer is aware of what options they have available to choose from.

2. **New principle (c) “RSPs should present the Broadband services they offer in a consistent way to enable effective comparison and choice by consumers”**

We are very supportive of this amendment, and the explanatory comments supporting it. It ensures that consumers shopping journey and ability to easily navigate and compare products will be consistent, which is an issue we have seen as more technologies come to market. We foresee significant consumer benefit within this addition to the guidelines, as it avoids consumers being nudged in a particular product direction due to website usability or the level of enticement used by a retailer to emphasise one product over another.

3. **New principle (d) “Where a Broadband service is only available in limited geographical areas, this limitation should be stated prominently in any marketing outside these geographical areas, particularly in national marketing”**

We are supportive of this amendment.

4. **New principle (h) “RSPs with differential sales incentive structures should have policies addressing the risk of misselling and processes for remedying any misselling that occurs”**

We have observed that there are specific targets publicly communicated by the three mobile network operators for fixed wireless conversion.^{1 2 3 4}

There is certainly a risk of *misselling* present in this scenario, so we appreciate the need for robust policies to be in place to protect consumers. Our understanding is that in practice RSPs already have these types of policy in place in order to meet their Fair Trading Act obligations, so this change may have limited impact.

In other industries where misselling has been such an issue that intervention has been necessary to protect consumers (such as the finance sector), this has required regulatory intervention rather than guidance. We suggest that the scope and severity of the issue be investigated thoroughly if the guidance is not perceived to be achieving the desired outcomes for consumers.

5. **New principle (j) “Any modem supplied by an RSP as part of a marketed plan should be capable of delivering the marketed speed”**

We are supportive of this amendment.

6. **New principle (n) “RSPs should ensure that existing customers have the usage and spend information required to meaningfully compare different services and service providers, including access to their Broadband usage and spend details over a minimum period of 12 months”**

We do not believe that this additional principle will provide consumers with meaningful information as it currently stands. This is because it replicates the initiative in the mobile market, where usage caps are more common.

For this to be of value in the broadband market, more consideration needs to be given to what parameters would be of use to consumers to enable review of their plans. Our view is that this likely requires a performance or quality component, but we encourage further research on this point to ensure the principle is an effective tool for consumers.

7. **New principle (p) “RSPs should always use MBNZ speeds in appropriate marketing when MBNZ speeds are available so that consumers understand what they can expect before making their purchasing decision”**

We are very supportive of this addition, and the guidance provided in the explanatory comments. There is significant risk of misleading consumers when side-by-side comparisons contain the speeds of only some of the broadband products available to a consumer at their premises. For example, the below snip is taken from the OneNZ broadband internet plans

¹ NZ Herald *Vodafone NZ first to go big with 5G wireless* 22 February 2021

² NZ Herald *Wireless ambition, Spark has begun migrating its fixed-line broadband users en masse to fast in-house technology, cutting UFB out of the loop* 25 February 2021

³ Spark *FY23 Results Summary* p5

⁴ Vocus and 2degrees *Merger clearance application* 15 February 2022

page⁵:

		Most Popular Fibre	Fastest Fibre
<p>Fibre Starter Unlimited Broadband</p> <p>Great for medium households using services like browsing, email, and streaming.</p> <p>\$60 / month</p> <p>New SmartWifi modem available for \$5/month on a 12-month term (plus \$14.95 P&H). No fixed term if you choose to bring your existing modem.</p> <p>Unlimited data</p> <p>Average peak time speeds: 50 Mbps download 10 Mbps upload</p> <p>No fee for standard connections</p> <p>Great features you can add on: SuperWifi - \$5 monthly (12-month term) Home phone - \$10 monthly</p> <p>Important things to know</p> <p>Check Availability</p>	<p>5G Wireless Unlimited Broadband</p> <p>Great for medium households who are online every day, learning, streaming, and working from home.</p> <p>\$65 / month</p> <p>New SmartWifi modem included for \$0/month on a 12-month term (plus \$14.95 P&H)</p> <p>Unlimited data (fair use applies)</p> <p>No connection fee</p> <p>Great features you can add on: SuperWifi - \$5 monthly (12-month term) Home phone - \$10 monthly</p> <p>Important things to know</p> <p>Check Availability</p>	<p>Fibre Everyday Unlimited Broadband</p> <p>Great for medium to large households, suitable for 4K UHD streaming, advanced gaming, & working & learning from home.</p> <p>\$96 / month</p> <p>New SmartWifi modem available for \$5/month on a 12-month term (plus \$14.95 P&H). No fixed term if you choose to bring your existing modem</p> <p>Unlimited data</p> <p>Average peak time speeds: 322 Mbps download 110 Mbps upload</p> <p>No fee for standard connections</p> <p>Great features you can add on: SuperWifi - \$5 monthly (12-month term) Home phone - \$10 monthly</p> <p>Important things to know</p> <p>Check Availability</p>	<p>Fibre Max Unlimited Broadband</p> <p>Great for large and extra large households, especially suitable for 4K UHD streaming and pro-level gaming.</p> <p>\$111 / month</p> <p>New SmartWifi modem available for \$5/month on a 12-month term (plus \$14.95 P&H). No fixed term if you choose to bring your existing modem.</p> <p>Unlimited data</p> <p>Average peak time speeds: 892 Mbps download 470 Mbps upload</p> <p>No fee for standard connections</p> <p>Great features you can add on: SuperWifi - \$5 monthly (12-month term) Home phone - \$10 monthly</p> <p>Important things to know</p> <p>Check Availability</p>

This is an example of where 5G Wireless does not have speeds reported, despite Fibre having speeds. This makes it difficult for a consumer to make an effective comparison of their options.

The same issue is present on the 2degrees broadband plans page⁶. In order for this risk to be completely mitigated, the major retailers need to participate in MBNZ reporting or provide alternative, independently verified data that enables a consumer to make an effective comparison.

Outcome 2: “Consumers should be able to exit a Broadband service that does not meet expected requirements”

We support the addition of this outcome, as consumers should be able to understand the performance of their service with consistency.

1. **New principle (b) “A broadband service will be deemed to materially fail if it more often than not fails to meet the following performance levels or when an RSP otherwise agrees it has materially failed”**

We support the need for a clear performance metric that consumers can understand. It is difficult for the industry to agree on what these metrics should be due to their being a wide range of performance delivered across the different broadband technologies.

Fibre is highly reliable for performance delivery, where wireless technologies are prone to having a wider range of performance experienced by the consumer due to the nature of the

⁵ <https://one.nz/broadband/internet-plans/>

⁶ <https://www.2degrees.nz/broadband/plans>

technology, and this is observed consistently in the Measuring Broadband New Zealand reports⁷.

However, we believe that it is due to these differences in performance reliability that easy to understand performance metrics are needed for the consumer. Where there are differences in the level of performance, consumers should be made aware of this, and using language and data that a consumer is able to easily understand.

2. **New principle (c) “RSPs should provide information regarding materiality thresholds in a way that is transparent and easy to understand for consumers”**

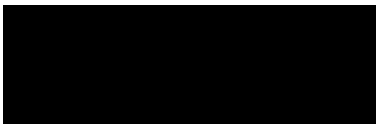
We are supportive of this addition, for reasons outlined for new principle b.

Part Three – Marketing Broadband services during the transition away from copper

We are supportive of the proposed changes to part three of the draft guidelines, further clarifying the expectations for issue resolution arising with the transition away from copper services.

Conclusion

The Commission has identified several areas that will make a difference to the consumer's experience of navigating and effectively comparing broadband options, and the guidelines proposed are broadly appropriate. From a wholesale fibre perspective, this work is highly valued, critical to ensuring fair market practises for consumers, and we appreciate the opportunity to suggest a few tweaks.



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⁷ https://comcom.govt.nz/_data/assets/pdf_file/0019/362521/Measuring-Broadband-New-Zealand-Report-21-September-2024.pdf