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Submission on *Draft Broadband Marketing Guidelines 2024*

Dear Andrew,

Enable welcomes the opportunity to make a submission on the *Draft Broadband Marketing Guidelines 2024 (Guidelines)* consultation. We note that none of the information in this submission is confidential.

Enable very much welcomes the Commerce Commission's (Commission) work in this area and substantially supports the Commission's updates to the Guidelines. We note the TCF submission where some further explanation of the Commission's evidence base would be valuable as good regulatory practice, as well as clarification in how the explanatory comments apply.

As previously submitted in 2021, the wholesale-retail separation of services does not work if RSPs do not present fibre fairly to consumers. The reputation of the sector also suffers if end-users feel they have been misinformed or received poor service. We therefore have a strong interest in the Commission's Guidelines, and consequent evolution of industry self-regulation.

We agree with the Commission that much progress has been made since the original Guidelines were published in 2021, and this should be commended. We note however, that the Guidelines were originally focused on the withdrawal of copper services. Much has changed since then, and the widespread adoption of 5G Fixed Wireless is potentially imminent. It is important that the Guidelines are kept up to date, and have added some comments in how we think this can be implemented with respect to marketing likely speeds of 5G fixed wireless.

Table 1 below provides more detailed feedback on the main changes the Commission is proposing to make.

Table 1: Enable’s comment on the main changes

Change	Enable comment
Title and structure of the MAS Guidelines	Enable supports renaming the Guidelines and the new structure proposed by the Commission
Marketing of broadband speeds:	<p>Enable strongly supports the Guidelines clarifying that MBNZ speeds should always be included when advertising any service where MBNZ results are available. We consider the second explanatory comment added does this very effectively and is a much supported addition to the Guidelines.¹</p> <p>We agree this was part of the original intent of the Guidelines and the Commission is providing a clarification.</p> <p>We note that this principle could be interpreted that if speeds are used, MBNZ speeds should be used. (Rather than speeds should always be used). We suggest wording such as “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. MBNZ speeds should be used.”</p> <p>We also support the principle added by the Commission on consistency, and note information on broadband speeds is one of the main areas where there is inconsistency across different products.</p> <p>We agree with the Commission that this helps ensure consumers have a clear view of the likely actual performance of all services</p> <p>As some additional comments:</p> <ul style="list-style-type: none"> • Enable supports peak time average speeds being used rather than maximum speed, and it is also important that upload speeds are included. • We note that with fixed wireless, there is a wide variation in peak-time speeds, and an average speed is likely to misrepresent the level of service an end-user receives. This is highly correlated with distance to a tower, and rather than rely on a “materially fail” test and consumers complaining, it would be

¹ For reference, the explanatory comment states, “Providing speed indications for some services (such as fibre) but not other services (such as wireless broadband) when they are published by MBNZ is unhelpful to consumers and risks being misleading by omission. Consumers should not be left to assume or guess or search for the undisclosed speeds themselves.”

	<p>better that purchasers have upfront information on what kind of service they may receive from 5G at an address.</p> <ul style="list-style-type: none"> • The availability of 5G MBNZ data is also poor, and it’s vital this is expanded to help address this issue. For example, the data would be much better if all major RSPs were included. • We note there may be an argument that MBNZ data changes several times a year and the practicalities keeping this up to date. The speeds don’t seem to change significantly over the course of a year, and so we are comfortable with speeds being updated in reasonable timeframes, as long as the date of report is referenced. • Websites should also include a simple explanation of what various metrics mean to assist consumers.
<p>Broadband usage and spend information</p>	<p>Enable supports the principle of proactive disclosure, and that activities such as annual updates help ensure consumers are on the correct plan and promotes competition.</p> <p>Given most end-users are on unlimited plans we are not sure that usage and spend information will be as valuable as it has been for mobile users. We assume the Commission is targeting those consumers who may be better off on a plan with a data cap, rather than an unlimited plan.</p> <p>Based on feedback from end-users and the Commission’s reports, it seems that providing wider quality and performance KPIs in the annual summary would be more useful to end-users, including information such as:</p> <ul style="list-style-type: none"> • Latency under load speeds • Maximum simultaneous impacts, e.g. peak time, with multiple downloads, or likely actual peak by speed by location <p>We recognise that implementation issues with RSPs would need to be worked through for any information that is disclosed.</p> <p>We note that ACCC guidance refers to current or anticipated network congestion in geographic areas, distance and any limitation of usage where the plan is otherwise described as “unlimited”.</p>
<p>Transparency of contact information</p>	<p>Enable supports the more prominent disclosure of broadband help and complaints contact information.</p>
<p>Incentive structures</p>	<p>Enable supports the Guidelines covering incentive structures, and ensuring appropriate policies are in place.</p> <p>We note the comment in the TCF submission that it would be good practice to view the evidence base the Commission has considered.</p>

	<p>Assuming this evidence base exists, then we think it is helpful that the Guidelines provide more detail about what that means in practice, as it is beneficial to avoid having litigation under the Fair Trading Act as the only tool to drive better behaviour.</p>
<p>The definition of materially fail</p>	<p>Enable supports end-users having a clear idea of what “materially fail” means to make it easier to understand what their rights are, and also note the Commission’s comments on this in the review of the Telecommunications Dispute Resolution scheme. We note companies normally have defined policies of what this level is, and that these are not published.</p> <p>Again, we note that it would be helpful to have more information on the issues the Commission has seen and how the proposed thresholds have been developed by reference to best practice across major providers.</p> <p>We note the TCF submission includes analysis on what the proposed thresholds might mean in practice. This analysis raises the question that the “materially fail” level is fundamentally linked to the average speed a service is marketed at.</p> <p>This links to the earlier point about how speeds are advertised, the flawed concept of an average for fixed wireless when the lower tail is so large, the need for better MBNZ data and a more sophisticated application of where a consumer lives and the capacity available.</p> <p>This shows that different technologies may need differing considerations to ensure consumers get the best information to make informed decisions.</p>
<p>Other matters</p>	<p>The Commission has added a new principle that “Any modem supplied by an RSP as part of a marketed plan should be capable of delivering the marketed speed.”. We note this is already in the TCF Code.</p> <p>What would be helpful is for all RSPs to give advice on the optimum set-up and placement of modems. Some RSPs do this, but we consider having it more widespread would be very helpful to consumers.</p>