

13 November 2024

market.regulation@comcom.govt.nz

DRAFT Broadband Marketing Guidelines 2024

Mercury welcomes the opportunity to provide feedback to the Commerce Commission (the Commission) on its *draft Broadband Marketing Guidelines 2024* (the proposed Guidelines) which have come as a result of the Commission review of the existing *Marketing alternative telecommunications services during the transition away from copper Guidelines* (the MAS Guidelines).

We are pleased the Commission found a high level of alignment across the industry with the MAS Guidelines. Mercury believes by and large the MAS Guidelines are still fit for purpose and have greatly increased RSPs obligations and improves consumer outcomes. We are supportive of some tweaking of the MAS Guidelines to iron out ambiguities, thus we are encouraged by the renaming and new structure of the MAS Guidelines in an effort to clarify and simplify their intent.

While supportive of procedural tweaks, we believe some of the suggestions in the proposed Guidelines may unintentionally cause confusion and not achieve the policy intent that the Commission is seeking. Above all, we urge the Commission to consider the impact some of the proposals could have on innovation and competition. We continue to advocate for less prescriptive and outcome focused obligations.

Disengaged customers who fear longer sign-up times, overwhelming communications and extensive terms and conditions may be less likely to switch retail service providers (RSPs) if they dread the sign-up and switching process. In addition, we are conscious that the Commission has not yet finalized the draft Price & Cost guidelines, and it is unclear what relationship those will have with these Guidelines, particularly section F of the draft Price & Cost Guidelines, which pertain to how consumers can compare plans.¹ We are also awaiting

Our submission is brief and should be read alongside the TCF submission. We limited our feedback to four aspects of the proposed Guidelines:

- a) Challenges of specifying geographical availability in national marketing
- b) Addressing customer usage information and plan selection
- c) Broadband help and complaints contact information
- d) Materiality thresholds require further consideration

Challenges of specifying geographical availability in national marketing

The Commission has included additional considerations under Part 2, outcome 1 whereby, among other requirements, they note “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 understand the potential need for specificity during a targeted marketing initiative, but we believe it is impractical to achieve specificity at the national level. Broadband technology availability does vary depending on geographical areas, and while it is possible to disclose this at a high-level to have specificity of exactly what and

¹ https://comcom.govt.nz/data/assets/pdf_file/0026/337670/Improving-RSQ-Draft-Product-Disclosure-Price-and-Cost-Guidelines-14-December-2023.pdf



where certain technologies might be available will not be conducive to good consumer outcomes. A billboard, with limited space, or a national television campaign, cannot convey detailed information about technology availability in specific geographical areas. These methods of marketing are intended for broad messaging and are fundamentally unsuited to providing the nuanced, location-specific data the Commission suggests.

In practice, attempting to convey detailed availability in a national campaign would result in cluttered, overly complex advertisements that confuse rather than clarify information for consumers. More specifically, as a provider of fixed-wireless technologies through a MVNO arrangement we do not have real-time data on geographical availability until such time as customer makes contact and is, in terms of the customer journey, in proximity to the purchase process. To require providers to prominently disclose technological availability in a national-level campaign with such detail of granularity may impact competition and distort the playing field as well as lead to confusion and poorer consumer outcomes. We propose instead aligning the wording to the TCF Broadband Marketing Code.

Addressing customer usage information and plan selection

In a competitive market, consumers select plans that best suit their unique needs and the value they seek. We recommend that the Commission undertake further analysis of the proposal to have consumers have access to their usage and spend information over a minimum of 12 months before including it in the proposed Guidelines, for the following reasons:

1. Value of usage information for Broadband: Usage information may hold limited value for consumers, particularly as a vast number of consumers are on uncapped fibre Broadband plans, where data limits are irrelevant. Consumer preferences on plan choices are often influenced by additional benefits, such as discounts or bundled options. Therefore, providing usage data is unlikely to assist consumers meaningfully when comparing or switching plans.
2. Timing and system upgrade implications: requirements for RSPs to provide usage information to existing customers either on the app or annually is ultimately going to require system upgrades particularly due to the minimum requirement for the information to be over 12 months. As most IT departments observe a shutdown over the Christmas period any improvements to the status quo needs to be mindful of this.
3. Duplication with draft Price & Cost Guidelines: Similar provisions are being considered in the 2023 draft Price & Cost guidelines section F. To avoid duplicated efforts by both the Commission and RSPs, we suggest, at minimum, removing this provision from the proposed Guidelines and revisiting it for potential inclusion in the draft Price & Cost Guidelines after further customer research and industry engagement in the new year.

More broadly, while the draft Price & Cost Guidelines may serve as a potential avenue for this provision, we maintain the view that a Consumer Data Right (CDR) framework would be a more effective long-term solution for managing this type of information. The intended purposes of the Customer and Product Data Bill, currently under Select Committee, is to give customers greater control over their data, making it easier for them to switch providers for services such as banking, electricity, and telecommunications. While the Ministry for Innovation, Business and Employment (MBIE) has not yet signaled for telecommunications to be designated, it is likely that the industry will be designated in the near future. We expect this type of information to be made available under a consumer data right framework.

Broadband help and complaints contact information

For RSPs that align with the MAS Guidelines and are signatories to the TCF Customer Care Code we would welcome clarity on the Commission's view of what "more prominent (emphasis added) disclosure of Broadband help and complaints contact information" entails.



If an RSP is found not to be providing consumers with adequate help and complaint information, then we consider that the Commission could raise the issue directly with the RSP. If the RSP does not address the issue to the Commission satisfaction, then it would be appropriate for the Commission to act as opposed to Commission seeking to amend existing obligations which the majority of RSPs are already adhering to.

Our view is that if an RSP aligns with the MAS Guidelines and the TCF Customer Care Code on the matter of help and complaints contact information then that ought to be sufficient for the purposes of the proposed Guidelines.

Materiality thresholds require further consideration

We support the TCF's comments on the proposed materiality thresholds. In our view, the materiality thresholds in the proposed Guidelines could merit further discussion, as they do not appear to be meaningful for consumers as presented.

We recommend further consultation through an industry workshop, similar to the approach taken during the development of the Commission 111 Code. This process allowed for two-way input from a variety of stakeholders, facilitating open discussions on implementation challenges and leading to positive outcomes for consumers, RSPs, and the regulator.

Yours sincerely,

Claudia Vianello



Regulatory Strategist

