

Product Disclosure – Retail Service Bundling Guidelines (Energy and Telecommunications Bundles)

**Issued to the telecommunications industry under section 234 of the
Telecommunications Act 2001**

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Associated documents

| Publication date | Reference | Title |
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| 9 December 2021 | 978-1-869459-63-5 | Commerce Commission: Improving Retail Service Quality Final Baseline Report |
| 12 October 2022 | 978-1-99-101238-8 | Improving Retail Service Quality: Product Disclosure – Emerging Views Paper |
| 30 June 2023 | 978-1-991085-21-4 | Improving Retail Service Quality: Product Disclosure – Q3 Update and Response to Submissions |

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Introduction

In 2018, Parliament amended the Telecommunications Act 2001 to introduce *Part 7: Consumer matters*, aimed at improving retail service quality (**RSQ**).¹ These new consumer provisions directed us to monitor RSQ and make information available in a way that informs consumer choice. Part 7 also empowered us to review industry RSQ codes, issue guidelines, and create Commission RSQ codes.

In 2021, following extensive consultation, we published the *Improving Retail Service Quality Final Baseline Report*.² In this report, we identified a range of RSQ issues across the customer lifecycle that consumers indicated needed improvement. Several of these issues related to product disclosure.

Product disclosure refers to the information RSPs provide to consumers to describe goods and services, both through marketing communications and at the point of sale.

In 2022, we published the *Improving RSQ: Product Disclosure – Emerging Views Paper*.³ In that paper, we explored several key areas of consumer concern relating to product disclosure, including that there is a lack of transparency in bundles, with the bundling of energy (i.e., electricity and gas) and broadband services being a key area that consumers found difficult to navigate.

In that paper, we also outlined how we might address these areas of concern. We sought submissions on these suggestions, and outlined our plan in the *Q3 Update* which we published on 30 June 2023.⁴

These Guidelines set out our expectations in relation to the bundling of energy and telecommunications services by retail service providers (**RSPs**). The Guidelines are intended to ensure that price and other key information relating to bundles is displayed in a clear and transparent manner to allow consumers to make appropriate comparisons and fully informed choices.

Our expectation is that all RSPs will review these Guidelines and make appropriate changes to their product disclosure practices in order to align with them.

In future, we may compare industry practice against these Guidelines, review relevant industry RSQ codes against these Guidelines under section 235 of the Telecommunications Act 2001 (the **Act**), and/or consider whether it is necessary to make a Commission RSQ code for product disclosure under section 236 of the Act.

These Guidelines are administered by the Commission.

¹ Telecommunications (New Regulatory Framework) Amendment Act 2018; Telecommunications Act 2001, Part 7.

² Commerce Commission "Improving Retail Service Quality: Final Baseline Report" (9 December 2021).

³ Commerce Commission "Improving Retail Service Quality: Product Disclosure – Emerging Views Paper" (12 October 2022).

⁴ Commerce Commission "Improving Retail Service Quality: Product Disclosure Q3 Update and Submission Response" (30 June 2023).

PART ONE – GENERAL

A. Commencement date

1. These Guidelines will take effect on the date of final publication. We expect RSPs to meet the expectations set out in these Guidelines within three months of their publication.

B. Application

2. These Guidelines apply to any RSP that offer both retail telecommunications and energy (gas or electricity) services to consumers (including as part of a bundle).
3. These Guidelines do not affect an RSP's obligations under applicable law or codes, including:
 - 3.1 the Telecommunications Act 2001;
 - 3.2 the Fair Trading Act 1986;
 - 3.3 the Consumer Guarantees Act 1993;
 - 3.4 Commission RSQ codes; and
 - 3.5 industry RSQ codes (if applicable).
4. If there is a conflict between these Guidelines and legislation or a Commission RSQ code, the legislation or Commission RSQ code will take precedence over these Guidelines to the extent of the conflict.

C. Purpose

5. The purpose of these Guidelines is:
 - 5.1 to improve RSQ to reflect the demands of end-users of retail telecommunications services;⁵
 - 5.2 to improve consumers' ability to compare products, plans, and providers by ensuring they are provided with clarity and transparency;
 - 5.3 to ensure consumers can make fully informed decisions;
 - 5.4 to improve marketing of services to consumers; and
 - 5.5 to inform the development of any industry RSQ codes that achieve the above outcomes.

⁵ Telecommunications Act 2001, s 233

D. Defined terms

6. In these Guidelines, unless the context otherwise requires:

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| Act | means the Telecommunications Act 2001; |
| broadband | means internet access using any access technology; |
| Commission | means the Commerce Commission; |
| Commission RSQ code | has the same meaning given in section 5 of the Act; |
| comparable plan | means the lowest-price unbundled plan which has the same technology, product, speed, allowances, user type, pricing structure, and payment structure, as relevant, as the bundled plan. For example, when comparing electricity plans, a bundled anytime continuous low-user rate would be compared against an unbundled anytime continuous low-user rate, and, when comparing broadband plans, a bundled unlimited fibre max would be compared to an unbundled unlimited fibre max plan; |
| consumer | has the same meaning as given in section 232 of the Act; |
| early termination fee | means any fee or charge applicable to a fixed-term plan (or individual good or service within a fixed-term offer) that becomes payable as a result of a consumer cancelling that fixed-term plan (or service, product, or component) before the expiry of the fixed-term; |
| energy bundle | means an arrangement where an RSP provides at least one energy service (such as gas and/or electricity) and at least one retail telecommunications service, regardless of whether these services were purchased at the same time, and where: <ul style="list-style-type: none">• buying one service impacts the price of another (e.g. a discount is applied to a consumer's broadband service on the basis that the consumer also has an active electricity service with that RSP); or• the ability to buy one service is dependent on also buying another (e.g., a consumer can only buy broadband from an RSP if they also have an active electricity service with that RSP); and• may include a good, either provided at a discount to the RRP or as part of the offer; |
| goods | has the same meaning as given in section 2 of the |

Consumer Guarantees Act 1993;

industry RSQ code

has the same meaning as given in section 5 of the Act, and at the date of these Guidelines includes:

- (a) TCF's *Code for the Marketing of Alternative Services During Copper and PSTN Transition*, dated 1 April 2022;
- (b) TCF's *Code for Broadband Product Disclosure Information*, dated 7 April 2022; and
- (c) TCF's *Code for the Marketing of Broadband Services*, dated 30 April 2022;

marketing communication

means any communication relating to the description, promotion, advertising, or sale to consumers of retail energy bundles, by an RSP or a contracted third party including, without limitation, online, email, print, television, radio, in-store, and door-to-door;

prominently disclose

means to display, in a position that is visible without requiring additional actions to view, in a manner that an ordinary consumer is likely to notice and understand;

plan

means an agreement between a consumer and an RSP, under which the RSP agrees to provide a mass-market service with an agreed set of terms. The plan specifies, without limitation, the technology, product, speed, allowances, user type, pricing structure (recurring, variable, controlled, time of day), and payment structure (pay-monthly or prepaid), as relevant;

retail telecommunications service

means a telecommunications service provided directly to a consumer;

RRP

means recommended retail price, being the price at which the manufacturer or supplier recommends a good or service is sold;

RSQ

means retail service quality, as defined in section 5 of the Act;

RSP

means retail service provider, being a provider of retail telecommunications services;

| | |
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| service | has the same meaning as given in section 2 of the Consumer Guarantees Act 1993, and includes services such as mobile, broadband, electricity, gas, and subscription streaming services; and |
| TCF | means New Zealand Telecommunications Forum Incorporated; |

E. Interpretation

7. In these Guidelines:

- 7.1 words and phrases have the meaning given to them in section D, or if not defined there, the meaning given to them in the Act;
- 7.2 if words and phrases can be interpreted in more than one way, the word or phrase must be read in the way that best promotes the purpose of these Guidelines in section C;
- 7.3 a reference to “include” (or “including”) means “include (or including) without limitation”;
- 7.4 references to sections and clauses are to sections and clauses of these Guidelines unless otherwise specified; and
- 7.5 section headings are for ease of reference and are not intended to affect the interpretation of the clauses.

PART TWO – PRODUCT DISCLOSURE FOR BUNDLED RETAIL TELECOMMUNICATIONS SERVICES

8. The purpose of this Part is to increase the transparency of pricing for goods and services contained within an energy bundle. This is to ensure that consumers can make informed decisions with a full understanding of the price of each component within the energy bundle, and any accompanying obligations.
9. Prior to the start of any sale to a consumer of an energy bundle, including when an energy bundle is created or changed, an RSP should:
 - 9.1 prominently disclose any relationship between, or condition attaching to, any good or service in the energy bundle, including when two or more services in the energy bundle need to be purchased together and the effect that terminating or exiting one service in the bundle may have on any remaining goods or services in the energy bundle;
 - 9.2 ensure that all goods and services in the energy bundle have the same contract end date where possible, or otherwise prominently disclose any differences in contract term and end dates to the consumer;
 - 9.3 prominently disclose any early termination fees that apply to the energy bundle and the consequences of cancelling any service within the energy bundle;
10. For the avoidance of doubt, we consider a sale to begin at the point at which a consumer enters an online checkout process, or begins an in-store, door-to-door, or phone signup process.
11. In any marketing communication relating to an energy bundle that includes prices, an RSP should:
 - 11.1 prominently disclose if the RSP's price for a plan within the energy bundle is higher than their price for a comparable plan outside the energy bundle;
 - 11.1.1 this means that if the daily charge and/or the per-kWh unit price are higher in the energy bundle than the unbundled price for a comparable plan, this should be prominently disclosed so that the consumers are aware of the unbundled alternative;
 - 11.2 display prices for all goods and services within an energy bundle on a GST-inclusive basis by default.
12. In any marketing communication relating to an energy bundle which includes a good, an RSP should:
 - 12.1 prominently disclose the RSP's retail price of the good outside of the energy bundle or, if the retailer does not sell the good separately, the lower of the RRP or the price at which the item is readily available;

Explanatory examples

These examples are intended to provide an illustration of how these Guidelines should be interpreted. They are not an exhaustive list of all scenarios in which the Guidelines will apply.

- An RSP's in-store or phone sales agent assists a consumer who has recently seen a billboard marketing a special offer:
 - *The sales agent should take care to ensure that the consumer is aware of all relevant matters listed in Part Two of these Guidelines prior to purchase, given that the billboard may not have prominently disclosed all of these matters. The sales agent should do this before they start the sales process.*
- An RSP offers an energy bundle in which it provides both electricity and broadband services. The electricity plan in that energy bundle has a higher daily and/or kWh charge than the RSP's comparable plan:
 - *The RSP should prominently disclose the lower-priced unbundled alternative such as by displaying the bundled plan price and the base rate comparable plan price immediately next to one another in a way that makes it clear that electricity is available separately at a lower price.*
 - *In making the disclosure, the RSP should give reference to the intention to these guidelines in that these things are compared on a like for like basis, for example so that the comparable plan is for the same user type (such as low user, standard) and have the same pricing structure (such as anytime, off-peak, controlled).*
- An RSP offers an energy bundle that includes an appliance as a joining incentive:
 - *The RSP should prominently disclose the RRP of the appliance or the price at which the appliance is readily available, so that the consumer is able to attribute an appropriate value to that component of the energy bundle.*
- An RSP offers an energy bundle that includes electricity, broadband, and a subscription streaming service that they also offer outside the energy bundle:
 - *The RSP should prominently disclose their retail price of the streaming service so that the consumer is able to attribute an appropriate value to that component of the energy bundle.*
- An RSP offers broadband services to customers who already have electricity with them. The RSP only offers broadband to customers with an active electricity service:
 - *The RSP should prominently disclose that in order to purchase a broadband service, the consumer must also continue to purchase an electricity service with the RSP.*
 - *The RSP should prominently disclose what will happen to the broadband service if the consumer switches or terminates their electricity service (i.e., what charges, early termination fees, and other consequences will follow).*
- An RSP offers an energy bundle in which it provides electricity and broadband services. On the RSP's website, it displays broadband prices inclusive of GST, and electricity prices exclusive of GST by default, with the option to view GST inclusive prices:
 - *The RSP should display the prices of all services in the energy bundle as inclusive of GST by default.*