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Submission Product Disclosure – Retail Service Bundling Guidelines

Utilities Disputes Limited | Tautohetohe Whaipainga (UDL) welcomes the opportunity to comment on the Commerce Commission’s draft *Product Disclosure -Retail Service bundling Guidelines* (21 September 2023).

About us

UDL is an independent, not-for-profit company that provides fair and independent resolution of complaints and disputes between utilities companies and their customers when they are unable to be resolved between the parties.

UDL operate four dispute resolution schemes: the Government approved Energy Complaints Scheme, Broadband Shared Property Access Disputes Scheme, a voluntary Water Complaints Scheme; and a private Telecommunications Scheme.¹ UDL’s Telecommunication’s Scheme presently has one member. The central documents for the scheme include a Customer Service Code which includes general principles regarding pricing, charges, fees, advertising and marketing.²

Comment

The Commerce Commission (Commission) has an important role in providing guidelines for retail service quality codes and in reviewing industry retail service quality codes.³ UDL supports the introduction of draft guidelines, which will be effective in ensuring telecommunication retail service providers follow best practice and facilitate customer choice. They include effective guidance on ensuring fairness for the consumer.⁴ UDL is in broad agreement with the *Retail Service Bundling Guidelines* and makes the following observations:

¹ UDL’s Telecommunications Scheme is not an Industry Dispute Resolution Scheme under Part 7 of the *Telecommunications Act 2001 (TA)*. UDL does not consider complaints about TCF members.

² UDL’s *Customer Service Code for the Telecommunications Complaints Scheme*, (1 April 2023). cls 4-8.

³ See ss 234 and 235 TA. The TA differentiates between a retail service quality code and industry retail service quality code, see also Commerce Commission, *Improving Retail Service Quality: Product Disclosure – Emerging Views Paper*, 12 October 2022, Attachment B.

⁴ See cl. 5 *Retail Service Bundling Guidelines (RSBG)*.

a) Clauses 3-4

These clauses could benefit from amendment to improve consistency with other industry guidelines when the bundle includes services that are not connected with telecommunications. For example, the Electricity Authority (EA), *Consumer Care Guidelines* sets out in relation to bundled services that electricity services have priority:

*Retailers that offer bundled goods/services should, for a customer not on a payment plan and who is in payment arrears and/or is having payment difficulties, explain to the customer how part payments are being cleared against bundled components of an invoice that cover multiple goods/services provided. Retailers should consider allowing customers to elect that any part payments clear the customer's debt related to electricity supply or distribution services first.*⁵

An express mention of other industry guidelines and their place within the *Retail Service Bundling Guidelines* also appears necessary due to the observation in the introduction that the bundling of energy and broadband is a key area consumers have difficulty navigating.⁶

The disconnection of electricity can also be a life-threatening event. Therefore, an express mention of other industry guidelines which address such industry specific issues appears warranted. Rather than relying on the general principles set out in clause 9 and the without limitation provision at clause 7.

b) Clauses 5.5 and 6 Retail Service Quality Codes and Industry Retail Service Quality Codes

The Commission may wish to consider including separate definitions for *retail service quality codes* and *industry retail service quality codes*, as contained in the Telecommunications Act 2001 (TA)⁷. We note clause 6 only includes a definition of an industry retail services quality code, however, the Commission can issue guidance to both *retail service quality codes* and *industry retail service quality codes*. The Commission may therefore wish to include a definition of a *retail service quality code* in clause 6.

The Commission may also wish to consider including an express reference to *retail service quality codes* in clause 5.5 to make it clear its guidance will also be applied to this type of code.⁸ This would also align with the stated expectation of the Commission that all "...RSPs will review these Guidelines and make appropriate changes."⁹

⁵ Electricity Authority, *Consumer Crae Guidelines*, (1 July 2021), cl 44.

⁶ See *RSBG*, introduction, para 4.

⁷ See s 5 of the TA.

⁸ See ss 233-234 TA.

⁹ See *RSPG*, introduction, para 7.

c) Clause 9

I. Marketing and Disclosure

This clause sets out the requirements for any *marketing communication* a term defined as follows:

means any communication relating to the description, promotion, advertising, or sale to consumers of retail telecommunications services or bundles, including online, email, print, television, radio, in-store and door-to-door, descriptions, promotions, advertising, and selling;

Marketing communication is therefore broadly defined, and in each of these communications the retail service provider must *prominently disclose* certain aspects of the services being sold. The term *prominently disclose* is defined this way:

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;

The definitions are broad, and the Commission may wish to more fully set out how prominent disclosure may be achieved in each setting, particularly in the area of *selling*.¹⁰

II. A Permanent Record

The Commission may also wish to consider a clause setting out that any consumer who accepts a bundle offering has access to the promotional material after purchase. UDL has found a record of what is offered to a consumer, coupled with terms and conditions, can assist with resolving complaints.

III. Website

The Commission may also consider a website where different bundles can be compared. As bundles may include electricity plans, the Commission may wish to explore/study synergies with the Electricity Authority and its relationship with the Consumer NZ and the website Powerswitch.¹¹

¹⁰ For example, an offer summary for the bundle of services may be a useful mechanism in the marketing setting. TCF recommends such an offer summary in the context of broadband services, see TCF, *Code of Broadband Product Disclosure Information*, (7 April 2022), cls 8.

¹¹ See also UDL, *Submission on Commerce Commission's Consultation Paper- Improving Retail Service Quality: Product Disclosure*, 7 December 2022, 6.

Next Steps

If UDL can be of further assistance please contact Paul Moreno, Kaiwhakahaere Rangahau, Pūrongo | Research and Reporting Manager [REDACTED]

Yours sincerely

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