

DRAFT Product Disclosure – Retail Service Price and Cost Guidelines

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

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Associated documents

Publication date	Reference	Title
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
22 November 2023	978-1-991085-53-5	Product Disclosure – Retail Service Bundling Guidelines (Energy and Telecommunications Bundles)

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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 retail service providers (**RSPs**) provide to consumers to describe their 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 set out options to address several product disclosure problems prevalent in the market, including that:

- product information and service quality are not always aligned; and
- consumers find it difficult to compare plans.

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

These Guidelines set out our expectations in relation to the disclosure of offer summaries, price comparisons, and early termination fees by RSPs in marketing and price communications. The Guidelines are intended to ensure that this information 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 Act, and/or consider

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).

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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.

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 offers retail telecommunications 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;
 - 5.2 to ensure consumers who are considering purchasing a mobile or broadband retail telecommunications service can make fully informed decisions about which RSP and plan is best for them, including by enabling consumers to meaningfully compare plans offered by the same or different RSPs if they wish to do so;
 - 5.3 to improve RSPs' marketing of mobile and broadband retail telecommunications services to consumers; and
 - 5.4 to inform and encourage the development of industry RSQ codes that achieve the above outcomes.

D. Defined terms

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

Act	means the Telecommunications Act 2001;
average monthly price	means the price calculated in accordance with clause 10;
broadband	means internet access using any access technology;
bundle	<p>means an arrangement where an RSP provides more than one service to a consumer (e.g., broadband and energy), and includes at least one retail telecommunications service, regardless of whether those services were purchased at the same time, and where:</p> <ul style="list-style-type: none">(a) 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 mobile service with that RSP); or(b) 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(c) may include a good, either provided at a discount to the recommended retail price or as part of the offer;
Commission	means the Commerce Commission;
Commission RSQ code	has the same meaning as 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;
contingent charges	means fees, charges, or costs that may be incurred by a consumer under the terms of the plan at their election after the point of sale. These include call-out charges, early termination fees, and variable usage charges such as for extra data, voicemail, texts, or calling minutes;
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 offer that becomes payable as a result of a consumer cancelling or changing any plan, good, or service included in the offer before the expiry of the fixed-term;
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: <ul style="list-style-type: none">(a) <i>TCF's Code for the Marketing of Alternative Services During Copper and PSTN Transition</i>, dated 1 April 2022;(b) <i>TCF's Code for Broadband Product Disclosure Information</i>, dated 7 April 2022; and(b) <i>TCF's Code for the Marketing of Broadband Services</i>, dated 30 April 2022;
initial discount	means goods or services provided to a consumer free of charge or at a discounted rate for a limited period when a consumer purchases a plan;
mandatory upfront charges	means fees, charges, or costs that must be paid by a consumer when purchasing a plan in addition to the recurring price, such as standard set-up or installation charges and standard delivery fees;
marketing communication	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;
mobile	means cellular or satellite mobile telephony;

offer	means a set of terms and conditions that includes at least one plan and may include additional discounts, goods, and/or non-telecommunications services (such as subscription services) presented for sale to a consumer in marketing communications;
offer summary	has the meaning given in clause 15;
optional upfront charges	means optional fees, charges, or costs for any good or service that is purchased in conjunction with a plan, and that the consumer becomes liable to pay for at the point of sale, such as non-standard installation and non-standard equipment;
plan	means a mass-market mobile or broadband 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;
price communication	means any marketing communication by an RSP about the price of any of its plans;
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;
recurring price	means the regular price paid by a consumer each billing cycle for the plan purchased from the RSP;
retail telecommunications service	means a telecommunications service provided directly to a consumer;
RSP	means a retail service provider, being a provider of retail telecommunications services;
RSQ	means retail service quality, as defined in section 5 of the Act;
service	has the same meaning as given in section 2 of the Consumer Guarantees Act 1993, and includes services such as electricity, gas, and subscription streaming services;
standardised offer summary	means, in relation to an offer summary for each of an RSP's currently-offered plans, a standard-form summary

that complies with these Guidelines made available by TCF for use by all RSPs in New Zealand;

TCF means New Zealand Telecommunications Forum Incorporated;

total minimum cost has the meaning given in clause 12.6;

total minimum cost summary has the meaning given in clause 11;

E. Interpretation

7. In these Guidelines:

- 7.1 words and phrases have the meaning given to them in section E, 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 MOBILE AND BROADBAND RETAIL TELECOMMUNICATIONS SERVICES

F. RSPs should make it easy for consumers to compare the relative price of plans.

8. This section applies to any marketing communication that includes prices relating to a plan that is offered on a recurring basis.
9. An RSP should prominently disclose in any marketing communications that include plan prices the average monthly price of the plan to which the price communication relates (to the extent it is different from the advertised price);
10. The average monthly price:
 - 10.1 is, subject to clauses 10.2, 10.3, and 10.4 below, the total amount to be paid by the consumer for the plan over a 12-month period divided by 12, including mandatory upfront charges, initial discounts, and the recurring price;
 - 10.2 excludes any optional upfront charges and contingent charges;
 - 10.3 assumes that, where the term of the plan is less than 12 months, the consumer will pay the usual recurring price for the plan in each of the months after the end of the plan term up to and including the twelfth month;
 - 10.4 should be displayed on a GST-inclusive basis; and
 - 10.5 is to be displayed in close proximity to the advertised price.

G. RSPs should display the total minimum cost of an offer to make it easy for consumers to compare minimum total costs between offers.

11. An RSP should, at the point of sale, provide a consumer with a summary of the total minimum cost of the offer that the consumer is purchasing (**total minimum cost summary**), which includes in all cases, a clear disclosure of the offer's total minimum cost as defined in clause 12.6.
12. A total minimum cost summary should prominently disclose:
 - 12.1 the recurring price of each individual good or service in the offer;
 - 12.2 the total of the recurring prices, including the plan, any subscription services, and device repayments (if applicable);
 - 12.3 all initial discounts, mandatory upfront charges, and optional upfront charges broken down by good or service;
 - 12.4 the total of the initial discounts, mandatory upfront charges, and optional upfront charges that the consumer will incur or has chosen;

- 12.5 the term of the offer determined in accordance with clause 13;
 - 12.6 the total minimum cost of the offer, being:
 - 12.6.1 the sum of the recurring prices, any initial discounts, and mandatory upfront charges over the plan's term determined in accordance with clause 13;
 - 12.6.2 but excluding any optional upfront charges or contingent charges, (the **total minimum cost**).
 - 13. For the purposes of clauses 11 and 12, the term over which the total minimum cost must be calculated is the greater of:
 - 13.1 the relevant offer's term; or
 - 13.2 an assumed term of 12 months where the actual term of the offer is less than 12 months (on the basis that the consumer will pay the recurring monthly price for the plan in each of the months after the end of the offer's term up to and including the 12th month).
 - 14. An RSP may comply with clause 11 giving the consumer a reasonable opportunity to review the total minimum cost summary before the consumer commits to the offer. This could take the form of a checkout summary.
- H. RSPs should make standardised offer summaries available to consumers for all plans.**
- 15. An RSP should make a standardised offer summary available to consumers for every plan it offers (each an **offer summary**).
 - 16. RSPs should not combine offer summaries for similar plans or have an offer summary with variable options to cover multiple plans. Every plan that an RSP makes available to a consumer should have its own offer summary that conforms with the requirements in this section.
 - 17. The information in and form of an offer summary should be sufficient to enable an ordinary consumer to:
 - 17.1 understand both their and the RSP's principal rights and obligations under the plan; and
 - 17.2 easily compare the plan with other mobile or broadband plans (as the case may be) offered by the same or different RSPs.
 - 18. Standardised offer summaries should use a consistent format and standardised language to enable consumers to easily and readily compare different mobile offers, and different broadband offers, both across the same RSP and between different RSPs.

19. The TCF should prepare new standardised offer summary templates, for both mobile and broadband offers, that align with these guidelines and make these publicly available via the TCF's website for use by all RSPs in New Zealand.
20. Each offer summary should, at a minimum, include the following information:
 - 20.1 on the first page of the offer summary:
 - 20.1.1 a description of the goods and services provided in the plan;
 - 20.1.2 any dependent goods or services not provided in the plan that are required to receive the service (e.g., a broadband service that does not include a router or a VoIP service that does not include broadband);
 - 20.1.3 the prices, fees, and charges for each good and service in the plan, including the recurring price and any initial discount, mandatory upfront charges, optional upfront charges, and contingent charges;
 - 20.1.4 the term (duration) of the plan, including any fixed or minimum term that is applicable to the plan, or to any good or service within the plan, and any corresponding notice period that the consumer is required to comply with;
 - 20.1.5 any early termination fees for the plan (or any good or service within the plan), presented in a manner that complies with the requirements of section I; and
 - 20.2 in the remainder of the offer summary:
 - 20.2.1 the type, nature, quality, and expected performance of each good and service in the plan, including (as applicable):
 - (a) allowances and usage restrictions for voice, text, data, and other types of use; and
 - (b) the interoperability and dependencies that exist between any plan components (for example, specific equipment or operational requirements needed for a particular plan or service);
 - 20.2.2 the availability of the mobile or broadband services included in the plan;
 - 20.2.3 any factors which may affect, limit, or restrict the performance of any good or service in the plan, with a link to further information (where such information is available) (including, for example, an RSP's traffic management policy, if applicable);

- 20.2.4 all customer service and support channels that are available to the consumer, the hours of operation for each channel, and how the consumer can engage with them;
 - 20.2.5 a description of the RSP's complaints and disputes processes, including:
 - (a) where the RSP is a member of the Telecommunication Dispute Resolution scheme (**TDR**), a statement that the RSP is a member of, and a link to, the TDR; and
 - (b) where the RSP is not a member of the Scheme, a statement that the RSP is not a member of the TDR, and information on the New Zealand Disputes Tribunal process, including how to make a claim in the Disputes Tribunal;
 - 20.2.6 other material plan terms and conditions (for example, late payment penalties, payment and billing cycles, and the circumstances in which the RSP can change the terms of the plan, and information about consumer rights when such changes occur); and
 - 20.2.7 a link to the full contractual terms and conditions.
21. The format of offer summaries should be standardised across RSPs, and each offer summary should:
- 21.1 be no more than two A4 pages, in a format that can be downloaded and printed easily as a standalone document;
 - 21.2 contain clear headings that identify the subject-matter of each section;
 - 21.3 use standardised language to allow for easy comparison between plans;
 - 21.4 be written in a consumer-friendly way – clear, understandable, and with a minimum of technical jargon. Where any jargon or technical term is used, a glossary or definition should be provided within the same document;
 - 21.5 include a date of publishing to enable consumers to reference any changes subsequently made to the offer summary;
 - 21.6 be kept up to date;
 - 21.7 provide a direct link to any supplementary information referred to;
 - 21.8 be separate to the full contractual terms and conditions of the offer; and
 - 21.9 be accessible to people with vision impairments, including being written in a machine-readable format, with appropriate font, font size, and colour contrast ratios.

22. RSPs should prominently disclose a link to each offer summary on its website where plans are shown.
23. Prior to the start of any sale to a consumer an RSP should provide the consumer with:
 - 23.1 a reasonable opportunity to review the offer summary for the plan;
 - 23.2 information about how to contact the RSP with any questions on the plan; and
 - 23.3 a paper or digital version of the offer summary for the plan or any of the RSP's other plans, if requested by the consumer.
24. 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.
25. Without limiting clause 23, an RSP should also provide a consumer with a copy of the offer summary following the point of sale so that the consumer has a record (digital or otherwise) of the plan that they have purchased. This version of the offer summary should only contain details relevant to the specific plan purchased by the consumer and should not contain any extraneous information (for example, references to optional add-ons that the consumer has not selected).

I. RSPs should make consumers aware of any early termination fees that apply to their offers.

26. Where an early termination fee applies to an offer, this fact should be prominently disclosed in any marketing communication related to the offer.
27. Where an early termination fee applies to an offer, an RSP should publish in their offer summary:
 - 27.1 the cost/formula used to determine the applicable early termination fee(s) at any given point during the term:

For example: "The early termination fee payable on termination of this Plan is the current Monthly Fee multiplied by the number of months remaining on the Plan's Term multiplied by 65%.
 - 27.2 display the early termination fee(s) in the context of a table showing the fee reduction schedule on a monthly basis for the duration of the plan's term; and
 - 27.3 use simple and non-technical language (for example, avoiding terms such as "pro rata").

28. If a consumer's offer is subject to an early termination fee, the RSP should display on each invoice that the consumer receives the early termination fee that would be payable on the invoice date in a manner that makes it clear to the consumer that the early termination fee would only apply if the consumer terminated or changed their service as at the date of the invoice, and that the early termination fee, as displayed, does not form part of the amount payable as part of that invoice.
29. Early termination fees should reflect the actual loss to the RSP of a consumer terminating a fixed-term contract early. Early termination fees should change over the term of the offer i.e., they should be calculated in proportion to the amount of value received and remaining term of the offer as at the date of termination and should not be a fixed amount.

Explanatory notes

These examples are intended to provide an illustration of how these Guidelines should be interpreted.

- The following examples show how the average monthly price could be disclosed in a way that is compliant with clause 10 in Section F (RSPs should make it easy for consumers to compare the relative price of plans):

5GB Data

\$45 per month

All plans include:

- Unlimited calls*
- Unlimited texts*
- Wi-Fi Hotspot
- No fixed term

* Conditions apply

Click [here](#) for offer summary

In this example, because the monthly price is the same as the average monthly price, no further disclosure is required

5GB Data

\$2 per day

Average Monthly Price: \$60.83

All plans include:

- Unlimited calls*
- Unlimited texts*
- Wi-Fi Hotspot
- No fixed term

* Conditions apply

Click [here](#) for offer summary

In this example, because the recurring price is different to the average monthly price, disclosure is required.

5GB Data

**First month free
Then \$50 per month**

Average Monthly Price: \$45.83

All plans include:

- Unlimited calls*
- Unlimited texts*
- Wi-Fi Hotspot
- No fixed term

* Conditions apply

Click [here](#) for offer summary

In this example, because the recurring price is different to the average monthly price, disclosure is required.

Fibre Max

\$90 per month

Plan includes:

- Unlimited Data
- No fixed Term
- Free Wi-Fi Router

Click [here](#) for offer summary

In this example, because the monthly price is the same as the average monthly price, no further disclosure is required

Fibre Max

\$90 per month

Average Monthly Price: \$96.25

Plan includes:

- Unlimited Data
- 12-month term
- Wi-Fi router for \$5 per month and \$15 p&h

Click [here](#) for offer summary

In this example, because the consumer must purchase the Wi-Fi router, the average monthly price calculation is required (clause 10.1)

- The following example shows a total minimum cost summary for a plan on a monthly billing cycle that would comply with clause 1212 in Section G (RSPs should display the total minimum cost of an offer to make it easy for consumers to compare minimum total costs between plans):

Broadband Checkout		
Monthly Recurring Charges	Fibre Max Router	\$90 \$5
	Total Recurring	\$95
Upfront Charges	Router p&h Installation	\$15 \$99
	Total Upfront	\$114
Total Minimum Cost	\$1,254 over 12 months	

This checkout process summarises an open term broadband purchase and shows the total monthly recurring charges and upfront charges. As this plan has no fixed term, the total minimum cost is calculated over 12 months.

Mobile Checkout		
Monthly Recurring Charges	Phone plan Phone Term Discount	\$45 \$60 -\$10
	Total Recurring	\$95
Upfront Charges	Phone deposit	\$99
	Total Upfront	\$99
Total Minimum Cost	\$3,519 over 36 months	

This checkout process summarises a bundled mobile phone plan and a phone repayment over 36 months. It shows the total monthly recurring charges (including a term discount) and upfront charges. As the term for the phone repayment is longer than 12 months, the total minimum cost is summarised over 36 months.

- The following examples show how early termination fees could be disclosed in a way that would comply with clause 2727.2 in Section I (RSPs should make consumers aware of any early termination fees that apply to their plans):

An RSP offers a \$200 joining credit with broadband on a 12-month term

Months left in Contract	Early termination fee
12	\$200.00
11	\$183.33
10	\$166.67
9	\$150.00
8	\$133.33
7	\$116.67
6	\$100.00
5	\$83.33
4	\$66.67
3	\$50.00
2	\$33.33
1	\$16.67

An RSP offers 50% off for 6 months on a mobile plan with a 9-month term

Months left in Contract	Early termination fee
9	\$30.00
8	\$56.67
7	\$79.58
6	\$98.21
5	\$111.85
4	\$119.48
3	\$89.61
2	\$59.74
1	\$29.87

In this example the ETF increases in the first six months as the cumulative discount the consumer has received increases.

The plan's price is discounted by 50% for the first 6 months so the total value of the discount provided increases during these months.

Each month's discount is proportionally decreased over the remaining term, resulting in an ETF table that increases over the first six months before reducing to zero.

This ensure that no matter when the consumer chooses to exit their offer, their ETF is proportionate to the value they have received and the amount of term remaining.

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An RSP offers a Smart TV as a joining incentive on a 24-month term

Months left in Contract	Early termination fee
24	\$960.00
23	\$920.00
22	\$880.00
21	\$840.00
20	\$800.00
19	\$760.00
18	\$720.00
17	\$680.00
16	\$640.00
15	\$600.00
14	\$560.00
13	\$520.00
12	\$480.00
11	\$440.00
10	\$400.00
9	\$360.00
8	\$320.00
7	\$280.00
6	\$240.00
5	\$200.00
4	\$160.00
3	\$120.00
2	\$80.00
1	\$40.00