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Submitted via: [market.regulation@comcom.govt.nz](mailto:market.regulation@comcom.govt.nz)

Tristan Gilbertson  
Commissioner  
Commerce Commission

## **Re: Draft Product Disclosure – Retail Service Bundling Guidelines**

Whānau accessing a range of essential services should be able to access fair pricing arrangements without barriers. Essential telecommunication service businesses should ensure whānau do not become trapped in unaffordable or otherwise unsuitable arrangements and that whānau are not signed up to unaffordable or unsuitable arrangements in the first place.

FinCap welcomes the opportunity to comment on the Commerce Commission's *Draft Product Disclosure – Retail Service Bundling Guidelines (Draft guidelines)*. FinCap has regularly raised concern about the bundling of products and services and associated exit fees leading to financial hardship for whānau in Aotearoa. The relevant section of our *Put on Hold?* report is the most recent example of concerns we have shared from the financial mentors we support in relation to the mess caused by bundling.<sup>1</sup> We strongly support work by regulators to intervene and ensure bundling does not lead to avoidable complex disputes, expense and debt for whānau accessing essential services.

Too often the sale of essential services in ultimately unhelpful bundled arrangements happens in minutes, while unwinding the arrangements takes weeks and valuable time for a whānau and their financial mentor. The issue is intertwined with wider issues that need to be addressed to prevent essential telecommunications businesses causing and compounding financial hardship. The issues include:

- That financial mentors often find that these businesses are extremely difficult to work constructively with.
- That these businesses are often the source of problem debt behind unfair debt collection conduct.
- The inappropriate high pressure selling of unsuitable or unaffordable telecommunications products and services.
- That there seems no robust requirement for appropriate hardship assistance from these businesses.

FinCap welcomes the Commerce Commission's recent commitment in a stakeholder meeting to commence more work on debt issues caused by the conduct of the telecommunications sector. This could go a long way to improving outcomes for all whānau in Aotearoa.

We expand on these comments in our submission below.

## **About FinCap**

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 190 local, free financial mentoring services across Aotearoa.

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<sup>1</sup> Pgs 22-23: <https://www.cac.org.nz/assets/Documents/Put-on-hold-report-June-2023.pdf>

These services supported 50,000 whānau facing financial hardship in 2022. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

### **Comments on the approach to addressing bundling issues**

Telecommunications services are needed for whānau health, wellbeing and social participation. Our recent *Voices* report revealed that in 2022 the median debt owed to a telecommunications provider by whānau working with financial mentors was \$423.51.<sup>2</sup> While this was a reduction of \$61.19 from the previous year, it is an extensive amount of money to repay for those on low incomes in Aotearoa. Financial mentors have reported that retail electricity and telecommunications businesses are one of the most common underlying sources of problem debt subject to collection activity.<sup>3</sup>

The Draft guidelines appear to only seek to encourage upfront disclosure of the underlying costs in bundling arrangements. While we support guidance as opposed to the status quo, we anticipate ‘buyer beware’ approaches will be limited in their effectiveness given that comparing the pros and cons of bundling arrangements across industries will remain a complex and frustrating task for many whānau.

The reality seems to be that many switch when moving home when they have limited time and bandwidth to shop around and then end up stuck in arrangements with fees or other barriers to exit that make them hard to unwind or exit. Those with cash flow or debt issues who are supported by financial mentors could stand to benefit most from being on more suitable and affordable arrangements. However, they are more likely to face an exit fee which makes adjusting their bundled arrangements unaffordable. We recommend the Commerce Commission go further than the Draft guidelines and work out how best to intervene and require that bundling arrangements are quick and simple to unwind and exit without cost, especially where a whānau is facing financial hardship.

Financial mentors report having to consider multiple regulators and dispute resolution schemes when an issue arises with a bundled arrangement. The current Electricity Authority Consumer Care Guidelines attempts to deal with how partial payments are dealt with in some arrangements. However, the Electricity Authority guidance is voluntary and generally bundling is increasing the risk of inefficient and overcomplicated disputes and complaints for whānau just looking for fairness in the face of financial hardship. We recommend the Commerce Commission go further than the Draft guidelines and work out how best to improve access to justice for consumers with an issue with bundled services.

There remains a glaring gap in consumer protections where the long-term unaffordable repayment of a phone handset bundled with services is provided through high pressure selling. FinCap again calls for appropriate regulation to prevent businesses providing unaffordable lending in this space and that such arrangements are quick and simple to unwind without cost. We recommend the

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<sup>2</sup> See p.41: <https://www.fincap.org.nz/wp-content/uploads/2023/09/230915-Final-Voices-report.pdf>

<sup>3</sup> See page 7: <https://www.fincap.org.nz/wp-content/uploads/2021/09/Debt-collection-in-Aotearoa-from-the-perspective-report.pdf>

Commerce Commission add more to the guidance to prevent the purposes outlined in the guidance being undermined by high pressure selling tactics.

Bundling appears simple on face value and ideally the community could have trust and confidence that service providers have designed fair arrangements with fair costs across bundled services. Any transparency caused by the guidance may just reveal the complexity of services being bundled in the interest of businesses building market share and forcing customer retention rather than the interests of whānau. Ultimately whānau experiencing vulnerability face the greatest harm from this product design and this then strains the limited resources of financial mentoring services. FinCap sees merit in the Commerce Commission exploring whether it should require essential telecommunication services providers to have overarching fair conduct programmes similar to those being implemented for some financial institutions.<sup>4</sup> To avoid further avoidable debt issues from the unfair provision of these services, FinCap recommends the Commerce Commission move quickly to implementing wide reaching RSQ codes after issuing this guidance.

The common use of benefit periods for customer acquisition where telecommunications providers offer bundled subscription services that are discounted or free of charge for set periods runs significant risk of bill shock for whānau. To prevent this bill shock we recommend that the Commerce Commission expand the Draft guidance to say that a telecommunications provider should close, rather than roll over, non-essential subscription services as the default. An 'opt-in' system should instead be available to continue the service without discounts. This addition to the guidance has the potential to prevent unexpected defaults that can trigger a debt spiral of unexpected fees and/or unexpected overdraft for whānau facing financial hardship.

### **Specific comments on drafting**

#### *Application*

- The list provided in section 3 of the guidance could be expanded to remind telecommunications providers of relevant parts in the Electricity Authority's Consumer Care Guidelines. The disconnection of essential energy services can cause immediate challenges to the health and safety of a whānau. FinCap supports the current drafting of the Electricity Authority guidelines prioritising repayments in bundles to preventing the disconnection of electricity. Improving the Consumer Care Guidelines is currently in consultation but regardless, a general signpost to them and the electricity retail code would be helpful.

#### *Purpose*

- We recommend further purposes and corresponding guidance are added so as to implement recommendations from the previous section of this submission. An example would be a purpose to the effect of; 'To prevent barriers for consumers acting to lower expenses towards maintaining the supply of essential services.'

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<sup>4</sup> See: <https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/conduct-of-financial-institutions-regime/>

## *Part Two – Product Disclosure For Bundled Retail Telecommunications Services*

- 9.1.1 in the Draft Guidelines says any energy plan should be disclosed relative to the daily charge and kWh unit price of a comparable plan. This potentially only takes into account one ‘style’ of energy charges when the bundling of new energy services and complexity of retailer’s tariffs continue to increase. A time of use tariff is hard to compare where the variability of household usage heavily determines the merits of switching, likewise a demand tariff. There are also bundles emerging involving new energy technology which could add further complexity to comparison.<sup>5</sup> Many service businesses also only offer best offers in limited circumstances such as for new customers only so might not be captured for comparison. All of these issues need consideration and illustrate why a fair conduct programme approach to this industry might be preferable to extensive prescriptive guidance that is quickly worked around through ‘innovation.’
- 9.4 in the Draft guidance promotes contract end dates aligning. As recommended above, there should also be an expectation that non-essential bundled services end by default on this date unless the customer actively ‘opts-in’ to continue at their cost around the end date.

### *Explanatory examples*

- FinCap recommends examples are added to demonstrate guidance in the context of fair conduct when:
  - o A handset is sold with deferred payment alongside a phone plan.
  - o There is bundling of products and services involved in ‘the internet of things’ and/or utilising new energy technology.
  - o Complaints processes are across multiple channels where there is an issue with bundling.
  - o Exit fees should not prohibit whānau from exiting unsuitable or unaffordable arrangements.
  - o An ‘opt in’ to continue services at the end of a benefit period will best prevent bill shock.

Please contact Senior Policy Advisor Jake Lilley on [REDACTED] or [REDACTED] to discuss any aspect of this submission further.

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Ruth Smithers  
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**FinCap**

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<sup>5</sup> See for example: <https://www.solarcity.co.nz/blog/broadband-offer>