



DRAFT Product Disclosure – Retail Service Bundling Guidelines

Public Version

Commerce Commission

13 October 2023

Introduction

1. We welcome the Commerce Commission's consultation on the draft Product Disclosure – Retail Service Bundling Guidelines ('Guidelines'). It is particularly useful that the Commission has provided a full draft of the guidelines, complete with definitions and the proposed requirements for stakeholders to review.

Purpose

2. It is important with any regulatory intervention to consider the problem that needs to be addressed, and to ensure the proposed remedies are proportionate. For example, there is potential for customers to be misled where the individual elements of the bundle could be purchased at a lower cost than the bundle.
3. We have not seen any overwhelming evidence that transparency for bundles is an issue more generally. If the Guidelines are to include more general rules around bundle transparency, these should be less onerous than those targeted at misleading bundles.

Scope

4. The Guidelines would benefit from a 'scope' section that clearly indicates what is and out of scope. In particular, the draft definition for "bundle" is wide-reaching and, as written, captures things which we consider should be out of scope of these Guidelines. For example, we understand the Commission considers mobile handset payment plans to be out of scope, but these would arguably be caught by the bundle definition. The Guidelines should be clear on what items, or combinations of goods and/or services, are specifically out of scope in the Commission's view.

Definition Of A Bundle

5. We suggest the definition of a bundle be refined to focus on 'bundles' where multiple different products/services are bought at the same time for a single combined price.
6. It should not include situations where a customer gets a product or volume discount if they buy more of a single product – for example, a discount for buying or linking multiple mobile service contracts (such as Spark's "Team Up" offering).
7. The definition should also exclude things which are integral to a product, like bundling unlimited data with broadband, unlimited calling with mobile, international roaming bundles for mobile, different types of call 'bundles' for landlines, etc. These would be caught by the current definition as the bundled element is dependent on the broadband, mobile or landline service it is used over.

What 'Prominently Disclose' Means, and What Needs To Be Prominently Disclosed

8. The definition of "prominently disclose" creates a high standard in that the information must be visible without requiring additional actions to view it.

Interpreted literally, this would mean, for example, that the information has to be on the top of the front page of the website, otherwise the customer will have to take action to scroll down the page to see it. This is overly prescriptive and would create significant challenges, including when designing webpages which work on mobile devices with small screens.

9. We consider it is appropriate to provide much of the information required under the Guidelines as part of the customer's purchasing journey, further down the page, in info pop boxes or using drop down menus. These require one click, and the customer does not leave the webpage. This page structure is designed to present information to customers in an easy to digest way. Presenting too much information at the top of a page will likely reduce clarity for customers as it will require us to demote or remove other important information.
10. By way of comparison, providers selling landlines to customers are required to provide a range of information to customers including explaining any limitation on the customer's ability to make calls during a power failure and informing customers about the provider's vulnerable consumer scheme.
11. These are important elements of the product that customers need to be aware of before they sign up. We can present this information in a more comprehensive way when we include it in the customer's buy journey rather than attempting to summarise the information as a headline message on a plan card.
12. We request the Commission reviews its definition of "prominently disclose" and its applicability to each of the areas identified. For example, it may be appropriate to have a greater level of disclosure for the scenario under 9.1, whereas the other items in section 9 likely only need to be presented as part of the customer buy journey.

Prominently Disclosing Vs Different Marketing Media

13. The Guidelines should be clear on how information must be displayed such that the prominent disclosure requirements are met in different types of marketing. For example, a mobile plan may be advertised on a social media banner where space is at a premium.
14. Different marketing mediums allow for different levels of effective disclosure, based on the available space or time. The Broadband Marketing Code sets out suggested disclosure wording that is appropriate to use when making statements about broadband speed or performance. That Code provides example wording for radio and TV advertisements and billboards which is significantly shorter than for advertisements where there is space to provide a full explanation.¹
15. We consider this a sensible approach. The Guidelines currently imply that the "prominently disclose" requirements would apply equally to all types of media, so

¹ See New Zealand Telecommunications Forum 'Code for the Marketing of Broadband Services' (30 April 2022) Table 2, Examples of disclaimers when speed claims are used in marketing.

we suggest they be updated to allow for different approaches for different formats such as social media banners, plan cards, posters etc.

Price Comparison Websites

16. Consumers are increasingly relying on comparison websites and third-party agents in purchasing their communications and power services.
17. In turn, Chorus, LFCs and many RSPs have commercial arrangements with comparison websites and sales contractors to promote their services, including a commission on customer acquisition.
18. However, at this stage, it is unclear whether RSPs using third party channels for their Marketing Communications are required to comply with the disclosure guidelines. This leaves an obvious gap in the Guidelines.
19. A retailer should not be able to avoid the Guidelines by using a third party to market their products to consumers – whether this be door to door sales reps acting on their behalf, or price comparison websites.
20. We recommend that the Commission amend the definition of Marketing Communications to clarify that the definition includes communications provided through a third party that has a commercial relationship with the RSP for product marketing. For example, we believe that where an RSP uses a comparison website or door to door contractor to promote services, that the RSP should ensure these channels also comply.