

Via email [market.regulation@comcom.govt.nz](mailto:market.regulation@comcom.govt.nz)

13 October 2023

## Draft Product Disclosure Retail Service Bundling Guidelines

Mercury welcomes the opportunity to provide feedback to the Commerce Commission (the Commission) on its *draft Product Disclosure – Retail Service Bundling Guidelines* (the Bundling Guidelines) published on 21 September 2023.

Mercury is proud to place consumers at the center of all our decisions so we are supportive of the Commissions Bundling Guidelines which aim to ensure consumers can make appropriate comparisons and fully informed choices - subject to some changes to address a number of practical considerations.

### **Bundling, total costs and average prices Guidelines ought to be progressed simultaneously**

As we noted in our 2022 submission to the Product Disclosure Emerging Views Paper, we continue to believe that the Bundling Guidelines ought to be developed in conjunction with the additional Product Disclosure dimensions:

*“Comparing [average] Prices, Comparing Total Costs, and Comparing Bundle Pricing aspects of product disclosure should not be developed in isolation of each other, as the Consultation Paper implies. They are derived from the same product pricing information and consumers will need to understand how they relate to each other. A common framework should be specified that brings together the scope of services covered, calculation methodologies, and communication plan across these aspects.”<sup>1</sup>*

We urge the Commission to consider publishing draft Guidelines addressing the remaining relevant dimensions of Product Disclosure and receive feedback on those *before* publishing the final Bundling Guidelines. This will ensure communication and messaging is complete, comprehensive, and clear for consumers without unintended overlap. In addition, working these concurrently will mean that any required system upgrades as a result of any potential changes can be practically implemented and within reasonable and realistic timeframes.

### **Prominently disclosing too much information can have unintended consequences**

We believe further consideration needs to be given to how “prominently disclosing” the specified information would work in practice. As currently defined by the Commission, prominently disclose means “to display, in a position that is visible without requiring additional actions to view”. Mercury wholly supports providing consumers will all relevant information prior to the consumer making the decision to purchase a service. It is imperative that consumers are making an informed decision, but communication should be relevant and specific to consumers’ needs – it should be fit for purpose.

It is essential to develop ways to engage positively with consumers while recognising we all have too much information to process and use mental shortcuts (heuristics) to make decisions quickly and efficiently. For many, the rising volume of messages across all mediums and platforms is not always empowering—instead, it can be overwhelming. The Electricity Authority (EA) received similar feedback during their consultation which sought to include Utilities Dispute Resolution and Powerswitch prominently in all consumer communications. The EA's final

---

<sup>1</sup> Mercury submission to Emerging Views paper.



decision was to limit UDL to a consumer's bill and on the website. Understanding the reason and the point at which consumers are seeking specific pieces of information helps shape at what point of a consumer's journey information is provided.

Therefore, the Commission might like to consider some alternative options:

- a) changing the wording from "prominently disclosing" to, "in a manner that is consistent with industry standards"
  - a. this would allow the industry to work through the changes, most likely through the TCF as part of industry Code review(s), to develop sustainable outcomes that reflect the obligations;

or

- b) reword the definition to remove the reference to the information being "visible without requiring additional actions to view" so that more detailed information can be accessed via a link or drop-down box or on a specific tab or section of a website<sup>2</sup>.

### **The Commission is proposing that these Guidelines apply to all marketing communications**

Applying the draft Guidelines to all marketing communications<sup>3</sup> is likely to stifle innovative offers coming into market. Based on the current definition, it is possible to imagine a world in which only one-page local newspaper advertising is taken in order to fully comply with the Guidelines. This is clearly not the Commission's intent, but the two-prong approach of "prominently disclosing" the specified information in "all marketing communications" will have a chilling effect on competition, particularly for challenger telecommunications retailers.

It will become harder for consumers to find new deals to take advantage of. This means switching will be impacted as consumers may not be exposed to innovative deals and enjoy the benefit of a competitive market, potentially remaining on expensive and not-fit-for-purpose plans.

In addition, it is important to mention that most retailers run both regional and national advertising campaigns. For bundles that contain electricity, not only is the electricity price not the same throughout New Zealand due to the higher number of electricity distribution networks (EDBs) vis-à-vis telecommunication networks, but each EDB has their own specific pricing and in the future, likely cost-reflective-pricing with different on and off-peak signals depending on the network.

We agree that consumers need to see all relevant charges alongside one another before they make a purchasing decision so they can be fully informed. We look forward to participating in refreshing the TCF Marketing Codes as well as the TCF Product Disclosure Code to ensure this is realised. Consumers ought to be able to receive clear documents that outline the options available to them but including the level of information proposed in the Guidelines in all marketing communications, before a consumer is even interested in any offers, is impractical and unlikely to achieve the purposes of the Guidelines.

### **Closing remarks**

While we believe some minor changes to the Guidelines are needed, we are optimistic about the path ahead. However, it is worth noting that the parties involved in this consultation are by and large policy and regulatory experts, not marketing experts, so it is essential that innovation and competition is not unintentionally stifled, and that smaller retailers are not negatively impacted by these decisions. On the matters of the Recommended Retail Price and compliance and adherence to the Guidelines we would like to add that we are:

1. broadly supportive of the Commission's decision to include Recommended Retail Price in the Guidelines – it would be straightforward to display it. However, it may be different to market price so this may not have the intended effect the Commission is hoping for; and

---

<sup>2</sup> Contact suggestion as part of their EVP submission [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0022/302485/Contact-Energy-Submission-on-Improving-RSQ-Product-disclosure-emerging-views-paper-7-December-2022.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0022/302485/Contact-Energy-Submission-on-Improving-RSQ-Product-disclosure-emerging-views-paper-7-December-2022.pdf)

<sup>3</sup> Where this 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.



2. not clear as to how and when the Guidelines are expected to come into effect, how long retailers have to comply with the Guidelines, and would welcome further clarification on this matter.

If you have any questions about this submission, please do not hesitate to contact me.

Yours sincerely,  
Claudia Vianello



**Regulatory Strategist**

