

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

**13 October 2023**

**C H ● R U S**

## Submission

1. Thank you for the opportunity to submit on the *Draft Product Disclosure – Retail Service Bundling Guidelines (Guidelines)*. Chorus supports the Commerce Commission’s (**Commission**) objective to improve transparency and accuracy around bundled products.
2. Consumers are spoiled for choice when it comes to their broadband options. Alternative technologies, as well as alternative plans and bundles, help ensure there is something for all kinds of households and preferences. It’s great to see more retailers selling more fibre options beyond the popular Fibre 300 plan. We’re seeing an increasing number of retailers taking up our Home Fibre Starter plan (20+ retailers), which is similar in price to 4G fixed-wireless plans,<sup>1</sup> as well as growth in popularity for our Hyperfibre plans (35+ retailers), for those more data hungry households.<sup>2</sup>
3. As a wholesale provider, we don’t have the same direct relationship with consumers as retailers do. But we share an interest in ensuring consumers are given accurate information to make an informed choice when shopping for a broadband plan. While we offer the same wholesale services to all retailers, retailers choose whether to sell those services and how to package those up as plans for consumers. This means that retailers can choose different price points, features and bundles – even for the same wholesale service. This can be good for consumers when it results in a range of products and pricing that meets their needs whilst being marketed in a clear and transparent way that enables consumers to make fully informed decisions.
4. When consumers are unable to make fully informed decisions it can lead to unfair outcomes and consumer harm. This was illustrated in the recent “FibreX” judgment which stated, *“harm to the consumer was the denial of their ability to make an informed choice rather than the receipt of a materially inferior product”*.<sup>3</sup> This includes the ability to access information easily and be able to make ‘like for like’ comparisons. The “FibreX” case noted that a “layered approach” to information, i.e., where information isn’t all in one place and a consumer has the *option* to find out more, doesn’t mitigate potential harm.<sup>4</sup>
5. Therefore, enabling consumers to make an “informed choice” requires product information to be in an accessible place and easy to understand. The Guidelines seek to achieve this by requiring “prominent disclosure”, meaning *“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”*.<sup>5</sup>
6. We support this “prominent disclosure” requirement as it is a fundamental principle that helps ensure transparency of product information occurs in the right place and is meaningful. I.e., accurate and transparent product information is only useful if it is easily accessible and prominently presented to consumers on their shopping journey.
7. Importantly, the principle of prominent disclosure is relevant for *all kinds* of product and plan information – not just bundles. Additionally, ‘prominence’ may need to be considered differently depending on the medium, e.g., prominence of information in printed material, online via hyperlinks, via a salesperson or via chat bots could look very different across different retailers, and for both bundled and unbundled plans. For example:
  - a. The digitalisation of shopping means that consumers’ ability to make an informed choice is at the mercy of website design and how many ‘clicks’ away it is to find a plan and make comparisons which are crucial to and an informed choice. Where

<sup>1</sup> Although the price is similar, 4G fixed-wireless plans are capped even if described as “unlimited” because they are subject to “fair use policies”. We note some retailers advertising fixed-wireless have also stopped disclosing their average peak time speed. This creates inconsistency across product disclosure information.

<sup>2</sup> As at October 2023.

<sup>3</sup> *Commerce Commission v Vodafone New Zealand [2023] NZHC*, para 227

<sup>4</sup> *Commerce Commission v Vodafone New Zealand [2023] NZHC*, para 201

<sup>5</sup> See section D, defined terms of the Guidelines.

space constraints make this difficult (e.g., mobile or banner), consumers should be encouraged to find out more – and this should be made prominent, not via footnote.

- b. A quick shop around the web illustrates that there are a variety of ways retailers are displaying broadband options. We have seen examples of websites that do not present any fibre plans on “fibre broadband” pages - this is concerning and limits consumers’ ability to make an informed choice. This indicates that issues with product disclosure go beyond bundles.
  - c. In-store purchasing of products and plans, whether bundled or not, will largely come down to the sales scripts and staff incentives because the ‘point of sale’ requires engagement with staff. The same applies to call centre staff. Therefore, assessing and monitoring prominent disclosure should include sales scripts and staff incentives. This is a particular risk for those more vulnerable, such as the elderly population.
8. Therefore, to help ensure consumers are given the best chance to make a fully informed purchasing decision, Chorus **recommends**:
- a. **The Commission requires “prominent disclosure” across all product information – not just bundles.**
    - i. Applying the principle of “prominent disclosure” solely to information about bundled products risks creating an information gap and introducing incentives to “get it right” for bundled plans, without addressing stand-alone plans. The FibreX case demonstrates the importance of “getting it right” for consumers at the shopping stage.
    - ii. To this end, the Commission’s product disclosure requirements (whether guidelines or another instrument) should apply to all kinds of product disclosure, and not only product disclosure of bundles.
  - b. **The Commission considers whether voluntary guidelines are the most effective approach for implementing change and avoiding consumer harm.**
    - i. TCF members work hard to turn Commission guidelines into industry codes and implement them. However, not all retailers are TCF members. Given the significant number of retailers in the market outside the TCF there is potential for inconsistent implementation of these Guidelines and how they interact with other industry codes. Consumer outcomes are better supported by consistent and clear application and implementation of regulatory requirements across all retailers in the market.