

DRAFT Product Disclosure – Retail Service Bundling 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

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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 RSPs provide to consumers to describe 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 explored several key areas of consumer concern relating to product disclosure, including that there is a lack of transparency in bundles, with the bundling of energy (i.e., electricity and gas) and broadband services being a key area that consumers found difficult to navigate.

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

These Guidelines set out our expectations in relation to the bundling of services by retail service providers (**RSPs**). The Guidelines are intended to ensure that price and other key information relating to bundles 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 Telecommunications Act 2001 (the **Act**), and/or consider 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.

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).

PART ONE – GENERAL

A. Commencement date

1. These Guidelines come into force on **[to be confirmed]**.

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
 - 5.2 to improve consumers' ability to compare products, plans, and providers by ensuring they are provided with clarity and transparency;
 - 5.3 To ensure consumers can make fully informed decisions;
 - 5.4 to improve RSP marketing of retail telecommunications services to consumers; and
 - 5.5 to inform the development of any industry RSQ codes that achieve the above outcomes.

⁵ Telecommunications Act 2001, s 233

D. Defined terms

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

Act	means the Telecommunications Act 2001;
broadband	means internet access using any access technology;
bundle	means an arrangement where an RSP provides more than one service to a consumer (e.g., broadband and electricity), and includes at least one retail telecommunications service, regardless of whether those services were purchased at the same time, and where: <ul style="list-style-type: none">• 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 a mobile service with that RSP); or• 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• may include a good, either provided at a discount to RRP or as part of the offer;
Commission	means the Commerce Commission;
Commission RSQ code	has the same meaning 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;
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 plan (or individual good or service within a fixed-term offer) that becomes payable as a result of a consumer cancelling that fixed-term plan (or service, product, or component) 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) TCF's <i>Code for the Marketing of Alternative Services During Copper and PSTN Transition</i>, dated 1 April 2022; (b) TCF's <i>Code for Broadband Product Disclosure Information</i>, dated 7 April 2022; and (c) TCF's <i>Code for the Marketing of Broadband Services</i>, dated 30 April 2022;
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;
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;
plan	means an agreement between a consumer and an RSP, under which the RSP agrees to provide a mass-market service with an agreed set of terms. The plan specifies the technology, product, speed, allowances, user type, pricing structure (recurring, variable, controlled, time of day), and payment structure (pay-monthly or prepaid), as relevant;
retail telecommunications service	means a telecommunications service provided directly to a consumer;
RRP	means recommended retail price, being the price at which the manufacturer or supplier recommends a good or service is sold;
RSQ	means retail service quality, as defined in section 5 of the Act;
RSP	means retail service provider, being a provider of retail telecommunications services;

service	has the same meaning as given in section 2 of the Consumer Guarantees Act 1993, and includes services such as mobile, broadband, electricity, gas, and subscription streaming services; and
TCF	means New Zealand Telecommunications Forum Incorporated;

E. Interpretation

7. In these Guidelines:

- 7.1 words and phrases have the meaning given to them in section D, 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 BUNDLED RETAIL TELECOMMUNICATIONS SERVICES

8. The purpose of this Part is to increase the transparency of pricing for goods and services contained within a bundle. This is to ensure that consumers can make informed decisions with a full understanding of the price of each component within the bundle, and any accompanying obligations.
9. In any marketing communication relating to a bundle, and when a bundle is created or changed, an RSP should:
 - 9.1 prominently disclose if the RSP's price for a plan in the bundle is higher than their price for a comparable plan outside the bundle:
 - 9.1.1 in the case of bundles that include electricity or gas services, this means that if the daily charge and/or the per-kWh unit price are higher in the bundle than the unbundled price for a comparable plan, this should be prominently disclosed so that consumers are aware of the unbundled alternative;
 - 9.2 prominently disclose the RRP for any goods or third-party services, such as subscription streaming services, offered as part of the bundle or in the case of goods or third-party services sold separately by the RSP, the RSP's retail price of the good or service offered outside of the bundle;
 - 9.3 prominently disclose any relationship between, or condition attaching to, any good or service in the bundle, including when two or more services in the bundle need to be purchased together and the effect that terminating or exiting one service in the bundle may have on any remaining goods or services in the bundle;
 - 9.4 where possible, ensure that all goods and services in the bundle have the same contract end date, or otherwise prominently disclose any differences in contract term and end dates to the consumer;
 - 9.5 prominently disclose any early termination fees that apply to the bundle and the consequences of cancelling any service within the bundle;
 - 9.6 display prices for all goods and services within a bundle on a GST-inclusive basis by default.

Explanatory examples

These examples are intended to provide an illustration of how these Guidelines should be interpreted. They are not an exhaustive list of all scenarios in which the Guidelines will apply.

- An RSP offers a bundle in which it provides both electricity and broadband services. The electricity plan in that bundle has a higher daily and/or kWh charge than the RSP's comparable plan:
 - *The RSP should prominently disclose the lower-priced unbundled alternative such as by displaying the bundled plan price and the base rate comparable plan price immediately next to each other in a way that makes it clear that electricity is available separately at a lower price.*
 - *In making the disclosure, the RSP should give reference to the intention to these guidelines in that these things are compared on a like for like basis, for example so that the comparable plan is for the same user type (such as low user, standard) and have the same pricing structure (such as anytime, off-peak, controlled).*
- An RSP offers a bundle that includes an appliance as a joining incentive:
 - *The RSP should prominently disclose the RRP of the appliance so that the consumer is able to attribute an appropriate value to that component of the bundle.*
- An RSP offers a subscription streaming service half-priced as part of bundle with a mobile service:
 - *The RSP should prominently disclose the RRP of the subscription streaming service so that the consumer is able to attribute an appropriate value to that component of the bundle.*
- An RSP offers a bundle that includes broadband and a subscription streaming service that they also offer separately:
 - *The RSP should prominently disclose their retail price of the streaming service so that the consumer is able to attribute an appropriate value to that component of the bundle.*
- An RSP offers broadband services to customers who already have electricity with them. The RSP only offers broadband to customers with an active electricity service:
 - *The RSP should prominently disclose that in order to purchase a broadband service, the consumer must also continue to purchase an electricity service with the RSP.*
 - *The RSP should prominently disclose what will happen to the broadband service if the consumer switches or terminates their electricity service (i.e., what charges, early termination fees, and other consequences will follow).*
- An RSP offers a bundle of mobile and broadband services, with a discount on the broadband service if the consumer has an active mobile service with the RSP:
 - *The RSP should prominently disclose that to keep the discount on the broadband service, the consumer must also continue to purchase a mobile service with the RSP.*
 - *The RSP should prominently disclose what will happen to the broadband discount if the consumer switches or terminates their mobile service.*
- An RSP offers a bundle in which it provides electricity and broadband services. On their website they display broadband prices inclusive of GST, and electricity prices exclusive of GST by default, with the option to view GST inclusive prices:
 - *The RSP should display the prices of all services in the bundle as inclusive of GST by default.*