

13 October 2023

Market.regulation@comcom.govt.nz

Commerce Commission
WELLINGTON

Nova Energy Limited
PO Box 3141, Wellington 6140

0800 668 236

7.30am to 7pm – Monday to Friday

info@novaenergy.co.nz

www.novaenergy.co.nz

NOVA ENERGY SUBMISSION:

PRODUCT DISCLOSURE – RETAIL SERVICE BUNDLING GUIDELINES

1. Nova Energy Limited (**Nova**) welcomes the opportunity to provide a submission to the Commerce Commission (**Commission**) regarding the Commission's draft "Product Disclosure - Retail Service Bundling Guidelines" (**Guidelines**).
2. As the Commission will be aware, bundled energy and telecommunications service plans for both residential and commercial customers are a key part of Nova's (including Nova trading as Megatel's) retail sales strategy.
3. Nova supports, in principle, the proposal to introduce mandatory Guidelines for telco-bundle advertising. We note the explanatory examples provided on page 10 of the Guidelines are particularly useful, as they go to the heart of bundle advertising transparency issues the Commission is aiming to address.
4. However, as outlined below, Nova's concern is certain aspects of the proposed drafting are overly broad and could therefore have unintended and negative consequences for consumers (e.g., information overload and confusion from advertising, occurring before a supply contract has even been enquired about by the consumer and legally formed with that consumer).
5. We instead propose an alternative approach (also outlined below) would have a better result – both in terms of ensuring clarity and practicality for RSPs and in terms of improving bundle transparency for consumers.

Key concerns:

6. Nova is concerned about the broadness of three particular aspects of the proposed Guidelines themselves:
 - a) The proposed definition of "marketing communication" (emphasis added):

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.

The issue with this definition is it would capture literally any and all forms of marketing/advertising collateral – e.g., including things like very small social media GIFs or embedded advertising on third party websites, short radio advertisements, brief printed material (such as mail drop cards, posters etc.).

- b) The proposed guideline 9.3 (emphasis added):

In any marketing communication relating to a bundle, and when a bundle is created or changed, an RSP should... prominently disclose any relationship between, or [any] 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.

The issue with this guideline is it effectively would require any and all terms and conditions applying to the bundled-offer to be prominently displayed on any and all forms of “marketing communication” (which as noted above, is already an extremely broad definition).

- c) The proposed guideline 9.6 (emphasis added):

In any marketing communication relating to a bundle, and when a bundle is created or changed, an RSP should... display prices for all goods and services within a bundle on a GST-inclusive basis by default.

The issue with this guideline is there is no carve out or explanation for dealing with energy services in the bundle (like there is at proposed guideline 9.1). It is not an issue to display GST-inclusive pricing for telecommunications products and services. However:

- (i) There are 29 separate electricity network regions in New Zealand, each having multiple pricing options depending on the customer’s meter set-up, usage profile and billing preferences (e.g., Anytime / Composite / Controlled / Day & Night / Peak & Off-Peak / Standard versus Low User etc.).
- (ii) There is also a similar issue for natural gas networks and pricing options (albeit not as extensive as electricity pricing options).
- (iii) Where a bundle-plan allows customers to select from a range of different energy and telecommunications services to bundle together to unlock cheaper pricing for all bundled services (such as how Nova’s “Multisaver” bundle plans allows customers to select two or more eligible services – being electricity, natural gas, broadband and mobile), the impracticality of needing to “prominently display” GST exclusive pricing for every possible combination of services on every “marketing communication” is significantly compounded.

Suggested alternative approach:

- 7. Nova considers it would be highly impractical and also ineffective to require (under the draft Guidelines as currently drafted) “prominent disclosure” of any and all conditions attaching to any good or service in the relevant bundle, as well as GST inclusive pricing for every possible combination of services in the bundle, in all forms of “marketing communication”.
- 8. In Nova’s opinion, it is important to remember that:
 - a) Any form of advertising – whether for bundled telecommunications/energy products and services, or for any other type of product or service – is typically an **invitation to treat** (rather than an offer capable of immediate acceptance by a consumer).
 - b) For energy and telecommunications bundles in particular, there will often be a lot of different services that can be bundled together, and a lot of important conditions that apply to some or all services in the bundle (as well as important general conditions) – e.g. eligibility criteria, minimum number of services, discounted service pricing, price changes, contracted supply terms, termination fees, included data and call entitlements, new connection timing and costs, equipment supply terms (e.g. for modems, VoIP phones, SIM Cards) etc.
 - c) A key purpose of providing bundled packages is to be able to provide a more personalised response to customer service needs, as well as reducing RSPs’ average cost to serve per customer. This enables a lower priced package of services overall. Given these benefits to customers, Nova believes it would be unfortunate if excessive compliance requirements (and associated compliance costs) lead to increases in the cost of offering bundled packages (which would likely result from the guidelines as currently drafted).

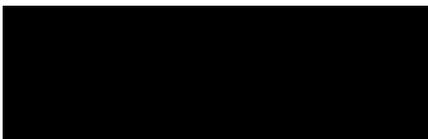
9. We therefore submit that a more effective approach would be for the Guidelines to:
- a) Set clear, specific, minimum requirements about what **must always** be prominently disclosed by RSPs in their bundle advertising collateral / marketing communications. These might include, for example: whether a minimum contracted supply term for any service applies; whether there could be any early termination fees; whether an advertised price is conditional on maintaining a certain number of bundled services; the RRP of any goods or third-party service included as an incentive, etc. The explanatory examples provided on page 10 of the Guidelines are considered a good yardstick in this regard.
 - b) Also require all RSPs to ensure any consumer who enquires about signing-up to a bundled offering (whether as a result of seeing the RSP's advertising collateral or receiving an RSP marketing communication, or otherwise) is first presented with a 'Bundle Offer Summary' – e.g. similar to the [Broadband Offer Summary](#) that members of the TCF need to provide to customers under the TCF's [Broadband Product Disclosure Code](#). The Guidelines could (for example) mandate that:
 - (i) The 'Bundle Offer Summary' must be in a prescribed form (set out in an appendix to the Guidelines) and presented to the customer in writing (as well as verbally if signing up in person or over the phone) **before** any supply contact is legally formed.
 - (ii) Customers who choose to sign up for a bundle after being presented the relevant 'Bundle Offer Summary' could still have a right to cancel the bundle supply contract within a set time period (e.g., similar to consumers' rights to cancel an uninvited direct sales agreement within 5 working days under the Fair Trading Act 1986 Part 4A subpart 2).
10. Nova considers the alternative approach suggested above would not only provide the necessary clarity for RSPs (in terms of practical compliance in their advertising collateral and marketing communications) but would also be much more effective at ensuring the Commission's goal of improving bundle transparency for consumers is achieved.

Next steps:

11. We would be happy to meet with the Commission to further discuss our submission, to answer any questions you may have, and to lend legal and marketing resource to assist in any revised Guidelines drafting workshop(s).
12. Please direct any questions or other matters regarding this submission, in the first instance, to:

Cameron Pentecost – Senior Legal Counsel – Todd Corporation


Yours sincerely,



Michael O'Donnell
General Manager – Nova Retail