

Product Disclosure – Price and Cost Guidelines

Issued to the telecommunications industry under section 234 of the Telecommunications Act 2001

The Commission: Tristan Gilbertson
 Pierre van Heerden
 Nathan Strong

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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
22 November 2023	978-1-991085-53-5	Product Disclosure – Retail Service Bundling Guidelines (Energy and Telecommunications Bundles)
14 December 2023	978-1-991085-59-7	DRAFT Product Disclosure – Retail Service Price and Cost Guidelines

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INTRODUCTION

In 2018, Parliament amended the Telecommunications Act 2001 (**Act**) 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 Commerce Commission (**Commission**) RSQ codes.

Issues with product disclosure emerged during our early work with consumers on RSQ matters.² This work showed that consumers find it difficult to compare plans because:

- > Product offers can be complex;
- > Offer details are not always clear or transparent; and
- > They find it difficult to compare plans with different usage periods.

We consulted with stakeholders on the best way of improving outcomes for consumers in these areas and set out options to address these issues.³ As part of this engagement, we issued draft Price and Cost guidelines for consultation, alongside consumer research.^{4 5}

These Product Disclosure – Price and Cost Guidelines (**Guidelines**) set out our expectations in relation to the presentation of standardised offer summaries, average monthly prices and early termination fees. The Guidelines are intended to ensure that this information is displayed in a clear and transparent manner to allow consumers to make appropriate comparisons and fully informed choices.

Our expectation is that all Retail Service Providers (**RSPs**) will review these Guidelines and make appropriate changes to their product disclosure practices in order to align with them. We also expect new entrants to the market to comply with these Guidelines within six months of launch.

In future, we may compare industry practice against these Guidelines, review relevant industry RSQ codes against these Guidelines under section 235 of 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 issued under section 234 of the Act and are administered by the Commission.

¹ Telecommunications (New Regulatory Framework) Amendment Act 2018; Telecommunications Act 2001, pt 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); Commerce Commission, *Improving Retail Service Quality: Product Disclosure Q3 Update and Submission response* (30 June 2023).

⁴ Commerce Commission, *Improving RSQ – Draft Product Disclosure – Price and Cost Guidelines* (14 December 2023).

⁵ Commerce Commission, *Improving RSQ – Price and Cost Research* (14 December 2023).

PART ONE – GENERAL

A. Commencement date

1. These Guidelines will take effect on the date of final publication.

B. Application

2. These Guidelines apply to any RSP that offers retail telecommunications services to consumers (including as part of a bundle).
3. RSPs comply with these Guidelines by giving effect to the Principles to achieve the Outcomes in accordance with the purpose of the Guidelines by the dates set out in Part Three – Implementation Schedule. 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.
5. These Guidelines should be read alongside the Commission's other RSQ Guidelines.

C. Purpose

6. The purpose of these Guidelines is to improve RSQ to reflect the demands of end-users of retail telecommunication services by:
 - 6.1. improving RSPs' marketing of mobile and broadband retail telecommunications services to consumers;
 - 6.2. standardising offer summaries of all mobile or broadband plans to make them more comparable;

⁶ Telecommunications Act 2001, s 233.

- 6.3. making relative pricing of mobile or broadband plans easier to compare, enabling consumers to make fully informed decisions about which RSP and plan is best for them;
- 6.4. making consumers aware that an Early Termination Fee (**ETF**) may apply and that they face a fair ETF; and
- 6.5. informing the development of industry RSQ codes that achieve the above purpose.

D. Defined terms

- 7. In these Guidelines, unless the context otherwise requires:

Act	means the Telecommunications Act 2001;
broadband	means a network service or connection providing “always on” access to the Internet provided to a fixed location over any technology, including prioritised and deprioritised services;
Commission	means the Commerce Commission;
Commission RSQ code	has the same meaning as given in section 5 of the Act;
contingent charges	means fees, charges, or costs that may be incurred by a consumer under the terms of the plan at their election after the point of sale. These include call-out charges, early termination fees, and variable usage charges such as for extra data, voicemail, texts, or calling minutes;
consumer	has the same meaning as given in section 232 of the Act;
ETF	means an early termination fee which is any fee or charge applicable to a fixed-term offer that becomes payable as a result of a consumer cancelling or changing any plan, good, or service included in the offer before the expiry of the fixed-term;
goods	has the same meaning as given in section 2 of the Consumer Guarantees Act 1993;
Guidelines	means these Product Disclosure – Price and Cost Guidelines;
industry RSQ code	has the same meaning as given in section 5 of the Act;
initial discount	means goods or services provided to a consumer free of charge or at a discounted rate for a limited period when a consumer purchases a plan;
mandatory upfront charges	means fees, charges, or costs that must be paid by a consumer when purchasing a plan, in addition to the recurring price, such as standard joining, set-up or installation charges;

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;
mobile	means a network service provided using cellular or satellite mobile technology;
offer	means a set of terms and conditions that includes at least one plan and may include additional discounts, goods, and/or non-telecommunications services (such as subscription services) presented for sale to a consumer in marketing communications;
offer summary	summary of a broadband or mobile plan clearly describing the plan, included services, key terms and conditions and other relevant information, in a consistent format and standardised language;
optional upfront charges	means optional fees, charges, or costs for any good or service that is purchased in conjunction with a plan, and that the consumer becomes liable to pay for at the point of sale, such as non-standard installation and non-standard equipment;
Outcomes	means the outcomes set out in these Guidelines;
plan	means an agreement between a consumer and an RSP for the provision of a retail telecommunications service under a standard form contract. The plan specifies, without limitation, the technology, product, speed, allowances, user type, pricing structure (recurring, variable, controlled, time of day), and payment structure (pay-monthly or prepaid), as relevant;
price communication	means any marketing communication by an RSP about the price of any of its plans;
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;
Principles	means the principles set out in these guidelines;
purpose	means the purpose set out in these guidelines;
recurring price	means the regular price paid by a consumer each billing cycle for the plan purchased from the RSP;
retail telecommunications service	means a telecommunications service provided directly to a consumer;
RSP	means a retail service provider, being a provider of retail telecommunications services;
RSQ	means retail service quality, as defined in section 5 of the Act;
service	has the same meaning as given in section 2 of the Consumer Guarantees Act 1993;

standardised offer summary	means, in relation to an offer summary for each of an RSP's currently offered plans, a standard-form summary that complies with these Guidelines made available by TCF for use by all RSPs in New Zealand;
TCF	means New Zealand Telecommunications Forum Incorporated;

E. Interpretation

8. In these Guidelines:

- 8.1. 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;
- 8.2. 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;
- 8.3. a reference to "include" (or "including") means "include (or including), without limitation";
- 8.4. references to sections and clauses are to sections and clauses of these Guidelines unless otherwise specified; and
- 8.5. section headings are for ease of reference and are not intended to affect the interpretation of the clauses.

PART TWO – GENERAL PRICE AND COST GUIDELINES

Outcomes and Principles

Outcome 1: Consumers should be able to compare the relative price of plans with different structures.

Principles

- a) RSPs should prominently disclose in appropriate marketing the average monthly price of a plan in close proximity to the advertised price if the average monthly price is different to the advertised price.
- b) The average monthly price should be calculated by taking the total amount, including GST, that the consumer will pay for the plan over a 12-month period (assuming they remain on the plan for 12 months) and dividing it by 12. The calculation should include the regular plan fees and any mandatory upfront charges or initial discounts, but exclude any postage charges, optional upfront charges or contingent charges.
- c) Prices should be displayed to the nearest cent (with 0.5 cents rounded upwards).

Explanatory Comments

- Innovation is an important part of a competitive market. Plans can have different constructs including billing periods and upfront discounts to match consumer demand. However, these differences can make it difficult for consumers to compare plans, particularly when they need to perform calculations. A reference price would assist consumers to more easily compare different plans.
- Appropriate marketing would include marketing that details the price and inclusions of a plan, such as plan pages, plan cards, plan brochures and sales calls, but would not include mass marketing communications, such as billboards, radio adverts, television adverts or banner adverts.
- Mandatory upfront charges are included so consumers understand the true cost of signing up to the plan when comparing to other plans.
- Our work with consumers showed a strong preference for the reference price to be monthly.
- Although RSPs should show average monthly prices when different to the advertised price, RSPs may decide to show them for all plans and offers for consistency of design.
- Appendix 2 shows some examples of how the average monthly price could be displayed.

Outcome 2: Consumers should have access to standardised offer summaries to help them compare plans.

Principles

- a) An RSP should make a standardised offer summary available to consumers for each plan it offers.

Explanatory Comments

- The purpose of the offer summary is to provide consumers with a clear, concise, transparent and standardised document to facilitate easy comparison between multiple RSPs and plans.
- A plan for this purpose (from a consumer perspective) is a set of allowances with a set price. Accordingly, a set of allowances presented as a popular bundle or combination for a specific price would constitute a plan. However, an offer with multiple price points, depending on inclusions, would constitute multiple plans.
- The offer summary should be sufficient to enable an ordinary consumer to easily compare the plan with other mobile or broadband plans (as the case may be) offered by the same or different RSPs.
- It is easier for consumers to compare plans and offers across RSPs when offer summaries do not combine similar plans and do not contain variable options covering multiple plans.

- b) A standardised offer summary should be a standalone document with a consistent format and standardised language to enable consumers to compare different plans, both across the same RSP and between different RSPs.

Explanatory Comments

- If all RSPs use a consistent format, layout and language then it is easier for consumers to compare side by side.
- The content of offer summaries may be different between mobile and broadband.
- Summaries are easy for consumers to understand and use when they:
 - a. contain clear headings that identify the subject-matter of each section;
 - b. use standardised language and format to allow for easy comparison between plans;

- c. are written in a consumer-friendly way – clear, understandable, and with a minimum of technical jargon;
 - d. are kept up to date with any changes in plans;
 - e. are separate to the full contractual terms and conditions of the offer; and
 - f. are in a format that can be downloaded and printed as a standalone document.
- Consideration should be given to making the offer summaries accessible to people with vision impairments, including being written in a machine-readable format, with appropriate font, font size, and colour contrast ratios.

c) RSPs should prominently disclose a link to offer summaries in appropriate marketing.

Explanatory Comments

- Appropriate marketing would include places where plan details are routinely included, such as plan pages, plan cards, plan brochures and sales calls, but would not include mass marketing communications, such as billboards, radio adverts, TV adverts or banner adverts.
- Appendix 1 shows examples of how a link could be displayed on plan cards.

d) The New Zealand Telecommunications Forum (TCF) should prepare standardised offer summary templates, for mobile and broadband plans, that align with these guidelines and make these publicly available via the TCF's website for use by any RSP in New Zealand.

Explanatory Comments

- The current TCF broadband offer summary template provides a good basis for further improvement to offer summaries and development of a mobile offer summary template.

Outcome 3: Consumers should face ETFs that are fair and be made aware of them before purchase.

Principles

- a) Where an ETF applies to an offer: (a) the fact that ETFs apply and the length of time they apply for should be prominently disclosed in any marketing communications related to that offer; and (b) RSPs should prominently disclose the amount of any ETFs and the length of time they apply for at least once during the sales journey.
- b) Any ETF should not be a fixed amount and should instead reduce as the consumer approaches the end of the term so that the ETF amount at the date of termination reflects only the remaining reasonable losses attributable to early termination.

Explanatory comments and example

- When offering a good or a third-party service reasonable losses would be the cost of the relevant good or service to the RSP. For example, in an offer involving the supply of a TV, the ETF would be related to the cost of the device to the RSP, not the retail cost of the device. The ETF would be calculated as the cost of the device divided by the total length of the contract and multiplied by the remaining term at the date of termination.
- When offering credits or discounts, reasonable losses would be the value of the credits or discounts given to the consumer for entering a contract. The value of credits or discounts given to the customer for entering the contract would be the difference between a fixed-term offer (with a contract) and a non-fixed-term offer (without a contract). The ETF would be calculated as the value of the credits or discounts divided by the total length of the contract and multiplied by the remaining term at the date of termination.
- For example, if a plan is offered as \$80 without a fixed term **and** \$80 plus a \$100 joining credit for a 12-month term, the value of benefits is \$100.
- Accordingly, if a customer terminated three months before the end of the term, the ETF would be \$25, calculated as $(\$100 \div 12) \times 3 = \25 .
- Appendix 2 shows examples of how ETFs could be calculated and displayed.

- c) RSPs should ensure that during a contract term consumers can easily access information on the remaining term of the contract and the ETF payable at the next invoice date.

Explanatory Comments

- To avoid information asymmetry, consumers need the remaining contract term and ETF information to understand their obligations and potential costs if they decide to terminate the contract early.
 - Easily access would generally mean the information is available to a consumer in way that consumers can quickly and simply access through a mechanism that an RSP considers works best for its customers, noting that general consumer preference appears to be for this to be provided through a self-service channel like an app or web portal, via an IVR or on their bill.
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PART THREE – IMPLEMENTATION SCHEDULE

RSPs operating at the commencement date are expected to comply with these Guidelines as follows:

Outcome 1

- RSPs should make the average monthly price of mobile and broadband plans available within 6 months of publication.

Outcome 2

- TCF should review and update its current broadband offer template within 6 months of publication.
- TCF should publish mobile offer templates within 12 months of publication.
- RSPs should provide standardised offer summaries for each plan they offer to consumers within six months of publication of new templates by TCF.

Outcome 3

- RSPs should make the expected ETF information available within 12 months of publication.
- Any RSP that begins to offer telecommunication services after the commencement date of these guidelines should comply with all relevant aspects of these Guidelines within 12 months of commencing operations.

APPENDIX 1

The following examples show how the average monthly price and offer summary links could be disclosed based on consumer research.

5GB Data	5GB Data	5GB Data
\$45 per month	\$2 per day Average Monthly Price: \$60.83	First month free Then \$50 per month Average Monthly Price: \$45.83
All plans include: • Unlimited calls* • Unlimited texts* • Wi-Fi Hotspot • No fixed term	All plans include: • Unlimited calls* • Unlimited texts* • Wi-Fi Hotspot • No fixed term	All plans include: • Unlimited calls* • Unlimited texts* • Wi-Fi Hotspot • No fixed term
* Conditions apply	* Conditions apply	* Conditions apply
Click here for offer summary	Click here for offer summary	Click here for offer summary

Because the average monthly price is the same as the monthly price, RSPs can decide to display or not.

Because the average monthly price is different to the advertised price, it should be shown.

Because the average monthly price is different to the advertised price, it should be shown.

APPENDIX 2

The following examples show how an ETF could be calculated and disclosed. Our work with consumers showed a strong preference for ETFs to be displayed in a table format.

An RSP offers a
\$200 joining credit
on a 12-month
term

Months left in Contract	ETF
12	\$200.00
11	\$183.33
10	\$166.67
9	\$150.00
8	\$133.33
7	\$116.67
6	\$100.00
5	\$83.33
4	\$66.67
3	\$50.00
2	\$33.33
1	\$16.67

An RSP offers a
Smart TV on a 24-
month term that
cost the RSP \$960

Months left in Contract	ETF
24	\$960.00
23	\$920.00
22	\$880.00
21	\$840.00
20	\$800.00
19	\$760.00
18	\$720.00
17	\$680.00
16	\$640.00
15	\$600.00
14	\$560.00
13	\$520.00
12	\$480.00
11	\$440.00
10	\$400.00
9	\$360.00
8	\$320.00
7	\$280.00
6	\$240.00
5	\$200.00
4	\$160.00
3	\$120.00
2	\$80.00
1	\$40.00