

Aussie Broadband Investigation Report

Findings

The ACMA finds that Aussie Broadband Pty Ltd (ACN 132 090 192) (**Aussie Broadband**) contravened subparagraphs 7(1)(a)(i) and 7(1)(a)(iv) and paragraph 11(1)(a) of the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (the **Consumer Information Standard**) on 27 February 2019 for the reasons specified below.

The ACMA also finds that Aussie Broadband contravened subsection 128(1) of the *Telecommunications Act 1997* (the **Act**) on 27 February 2019, as a consequence of failing to comply with the Consumer Information Standard, being an industry standard determined under subsection 125AA(1) of the Act.

Background

In a letter dated 27 March 2019, the ACMA advised Aussie Broadband that its compliance with sections 7, 8, 9, 10 and 11 of the Consumer Information Standard (the **requirements for KFS and NBN consumer plan advertisements**) was being investigated.

That same letter advised:

- that the ACMA had assessed the Key Facts Sheets (**KFS**) and advertisements of two National Broadband Network (**NBN**) consumer plans that were available on Aussie Broadband's website on 27 February 2019;
- that the plans assessed were the \$79/month 'Family' (residential NBN50, unlimited data) plan (**Plan 1**) and the \$69/month 'Everyday' (residential, NBN25, unlimited data) plan (**Plan 2**); and
- the ACMA's preliminary findings in relation to Aussie Broadband's compliance with the requirements for KFS and NBN consumer plan advertisements.

Aussie Broadband provided responses to the ACMA on 1 and 10 April 2019 (the **Responses**). The latter response included a revised KFS and screenshot of amended NBN consumer plan advertisements. The revised KFS and amended NBN consumer plan advertisements are not the subject of these final findings.

Reasons

The table below sets out the ACMA's final findings and the reasons for those findings. In making its final findings, the ACMA has considered the Responses.

Compliance with the requirements for Key Facts Sheets and NBN consumer plan advertisements

Provision of the Consumer Information Standard	Requirement	ACMA findings and reasons
7(1)(a)	<p>A retail carriage service provider must:</p> <p>prepare a key facts sheet containing information about NBN services, entitled "Key Facts Sheet: NBN Services", for each NBN consumer plan offered that:</p>	
7(1)(a)(i)	is clear, accurate and up-to-date;	<p>The KFS for Plan 1 and Plan 2 were not clear or accurate as they did not use the same plan names as their corresponding NBN consumer plan advertisements.</p> <p>Plan 1 was advertised as 'Family', however the corresponding KFS made no reference to this plan name, instead referring to the '50Mbps/20Mbps Unlimited GB – Standard Plus' plan.</p> <p>Plan 2 was advertised as 'Everyday', however the corresponding KFS made no reference to this plan name, instead referring to the '25Mbps/5Mbps Unlimited GB – Standard' plan.</p> <p>Therefore, the ACMA finds that Aussie Broadband has contravened subparagraph 7(1)(a)(i) by not preparing a KFS which is clear and accurate as required.</p>
7(1)(a)(iv)	complies with the minimum requirements for information.	<p>The KFS for Plan 1 and Plan 2 did not comply with all of the minimum requirements for information, namely:</p> <ul style="list-style-type: none"> - paragraph 8(1)(a); and - paragraph 8(1)(d) <p>as detailed below.</p> <p>Therefore, the ACMA finds that Aussie Broadband has contravened subparagraph 7(1)(a)(iv) of the Consumer Information Standard by not including the minimum requirements for information as required.</p>
8(1)	A key facts sheet must:	
8(1)(a)	if speed tier information is used to describe an NBN consumer plan in	The KFS for Plan 1 and Plan 2 stated that the tier speeds are the typical download

	<p>its advertising material for that plan, inform consumers that this represents the maximum possible speed that is available during off-peak periods;</p>	<p>speeds during off-peak periods but did not state that the tier speeds are the maximum possible download speeds that are available during off-peak periods, as is required.</p> <p>Therefore, the ACMA finds that Aussie Broadband did not include the minimum requirement in paragraph 8(1)(a) of the Consumer Information Standard in the KFS.</p>
8(1)(d)	<p>where the key facts sheet relates to an NBN consumer plan for a FTTB, FTTC or a FTTN connection - set out what remedies are available to consumers if it is established that the physical telecommunications network infrastructure underlying the consumer's connection to the NBN is not capable of providing the speed tier of the consumer's NBN consumer plan.</p>	<p>The KFS for Plan 1 and Plan 2 stated: 'once you're connected to the NBN, we automatically test what speed your NBN line is capable of. We then match this against the speed you've ordered, and will email you within 1-2 days to let you know whether you should drop to a different speed plan, stay the same, or whether you could go up if you want to.'</p> <p>This wording indicated that Aussie Broadband will advise what action the consumer should take if the line connection to their premises is not able to provide the speed tier of the consumer's NBN consumer plan.</p> <p>The KFS did not set out what remedies are available for a consumer to choose from.</p> <p>Therefore, the ACMA finds that Aussie Broadband did not include the minimum requirement in paragraph 8(1)(d) of the Consumer Information Standard in the KFS.</p>
11(1)(a)	<p>A retail carriage service provider must:</p> <p>where its advertising material relates to an NBN consumer plan for a fixed line NBN connection, include the information referred to in paragraph 8(1)(b), and subsection 8(2) where applicable, in its description of the NBN consumer plan in any such advertising material that is published in printed form or online, or broadcast by any means.</p>	<p>Paragraph 8(1)(b) of the Consumer Information Standard relevantly requires NBN consumer plan advertisements to set out numerical information describing the typical download speed that the average consumer can expect to receive during the busy period, and the hours over which the busy period applies.</p> <p>While the NBN consumer plan advertisement for Plan 1 and Plan 2 set out the typical download speed that a consumer can expect during the busy period, the NBN consumer plan advertisement did not state the hours over which the busy period applies.</p> <p>Therefore, the ACMA finds that Aussie Broadband has contravened paragraph 11(1)(a) by not including the typical busy period hours as required.</p>

Compliance with subsection 128(1) of the Act

Provision of the Act	Requirement	ACMA finding and reason
Subsection 128(1)	If an industry standard applies to participants in a particular section of the telecommunications industry and is registered under Part 6 of the Act, each participant in that section of the industry must comply with the standard.	<p>The Consumer Information Standard:</p> <ul style="list-style-type: none"> - is an industry standard determined under subsection 125AA(1) of the Act and registered under Part 6 of the Act; and - applies to retail carriage service providers (CSPs). <p>Aussie Broadband is a CSP that supplies internet services to the public. As a participant in the section of the telecommunications industry to which the Consumer Information Standard applies, Aussie Broadband is required to comply with the Consumer Information Standard under subsection 128(1) of the Act.</p> <p>Aussie Broadband did not meet the requirements for KFS and NBN consumer plan advertisements as described above.</p> <p>Therefore, the ACMA finds that Aussie Broadband contravened subsection 128(1) of the Act on 27 February 2019 by failing to comply with subparagraphs 7(1)(a)(i) and 7(1)(a)(iv) and paragraph 11(1)(a) of the Consumer Information Standard.</p>