

# Australian Private Networks (Activ8me) Investigation Report

## Findings

The ACMA finds that Australian Private Networks Pty Ltd trading as Activ8me (ACN 103 009 552) (**Activ8me**) contravened subparagraph 7(1)(a)(iv) of the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (the **Consumer Information Standard**) on 12 April 2019 for the reasons specified below.

The ACMA also finds that Activ8me contravened subsection 128(1) of the *Telecommunications Act 1997* (the **Act**) on 12 April 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 15 April 2019, the ACMA advised Activ8me 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 Activ8me's website on 12 April 2019;
- that the plans assessed were the \$34.95/month Satellite 'Standard' 15/75 GB (residential, 12/1Mbps) plan (**Plan 1**) and the \$69.95/month 'SuperSonic' fixed line (residential, 50/20Mbps, 250GB) plan (**Plan 2**); and
- the ACMA's preliminary findings in relation to Activ8me's compliance with the requirements for KFS and NBN consumer plan advertisements.

Activ8me provided a response on 1 May 2019 to those preliminary views of the ACMA (the **Response**). Activ8me did not dispute the preliminary findings in the Response but did provide revised KFS. The revised KFS 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 Response.

**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)(iv)	<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> <p>(iv) complies with the minimum requirements for information.</p>	<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"> <li>- paragraph 8(1)(b);</li> <li>- paragraph 8(1)(c);</li> <li>- paragraph 8(1)(d);</li> <li>- paragraph 9(a);</li> <li>- paragraph 9(b);</li> </ul> <p>as detailed below.</p> <p>Therefore, the ACMA finds that Activ8me 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)(b)	where the key facts sheet relates to an NBN consumer plan for a fixed line NBN connection:	
8(1)(b)(i)	set out numerical information describing the typical busy period download speed that the average consumer can expect to receive during the busy period under the NBN consumer plan;	<p>The KFS for Plan 2 stated that 'this pack uses the nbn tier SuperSonic (50/20Mbps), which are the theoretical maximums that will not be achieved in operation'. The KFS did not include numerical information describing the typical busy period download speed.</p> <p>Therefore, the ACMA finds that Activ8me did not include the minimum requirement in subparagraph 8(1)(b)(i) of the Consumer Information Standard in the KFS.</p>
8(1)(b)(ii)	state the hours over which the typical busy period download speed applies.	<p>The KFS for Plan 2 did not state the hours over which the typical busy period download speed applies.</p> <p>Therefore, the ACMA finds that Activ8me did not include the minimum requirement in subparagraph 8(1)(b)(ii) of the Consumer Information Standard in the KFS.</p>

8(1)(c)	contain information that provides a guide to consumers about the level of online usage the relevant NBN consumer plan can support during the busy period, which includes the following information:	
8(1)(c)(i)	examples of the common online activities that the NBN consumer plan can support;	<p>The KFS for Plan 2 stated that 'this tier is Good for large downloaders'. On its own, this statement is inadequate, as the KFS must provide examples of the common online activities that the NBN consumer plan can support.</p> <p>Therefore, the ACMA finds that Activ8me did not include the minimum requirement in subparagraph 8(1)(c)(i) of the Consumer Information Standard in the KFS.</p>
8(1)(c)(ii)	the approximate number of people who could participate in the common online activities referred to in subparagraph (i) simultaneously using different devices.	<p>The KFS for Plan 2 did not include any reference to the approximate number of people who could participate in the common online activities simultaneously using different devices.</p> <p>Therefore, the ACMA finds that Activ8me did not include the minimum requirement in subparagraph 8(1)(c)(ii) of the Consumer Information Standard in the KFS.</p>
8(1)(d)	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>The KFS for Plan 2 stated that 'if for any reason you are unhappy with your service, please call our customer service team on 13 22 88'. The KFS did not set out what remedies are available to a consumer if the consumer's NBN connection is not capable of providing the speed tier of the consumer's purchased NBN plan.</p> <p>Therefore, the ACMA finds that Activ8me did not include the minimum requirement in paragraph 8(1)(d) of the Consumer Information Standard in the KFS.</p>
9	A key facts sheet must:	
9(a)	state that NBN services will not function during a power failure unless the NBN service is connected using FTTP and an NBN battery backup power supply unit is also installed and working; and	<p>The KFS for Plan 1 and Plan 2 did not state that NBN services will not function during a power failure unless the NBN service is connected using FTTP and an NBN battery backup power supply unit is also installed and working.</p> <p>Therefore, the ACMA finds that Activ8me did not include the minimum requirement in paragraph 9(a) of the Consumer Information Standard in the KFS.</p>

9(b)	state that other factors at the consumer's premises can affect or reduce the speed or performance of their NBN broadband service, provide common examples of such factors, and state what actions consumers could take to reduce the impact of those factors.	<p>The KFS for Plan 1 and Plan 2 stated 'speeds to individual premises may vary and can be affected by the volume of traffic on the general internet, the number of users online at your house, your equipment, software and the source of your download'.</p> <p>This wording did not provide information about actions consumers could take to reduce the impact of factors that can affect the download speed or performance of their service.</p> <p>Therefore, the ACMA finds that Activ8me did not include the minimum requirement in paragraph 9(b) of the Consumer Information Standard in the KFS.</p>
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**Compliance with subsection 128(1) of the Act**

<b>Provision of the Act</b>	<b>Requirement</b>	<b>ACMA finding and reason</b>
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"> <li>- is an industry standard determined under subsection 125AA(1) of the Act and registered under Part 6 of the Act; and</li> <li>- applies to retail carriage service providers (<b>CSPs</b>).</li> </ul> <p>Activ8me 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, Activ8me is required to comply with the Consumer Information Standard under subsection 128(1) of the Act.</p> <p>Activ8me did not meet the requirements for KFS and NBN consumer plan advertisements as described above.</p> <p>Therefore, the ACMA finds that Activ8me contravened subsection 128(1) of the Act on 12 April 2019 by failing to comply with subparagraph 7(1)(a)(iv) of the Consumer Information Standard.</p>