

My Net Fone Investigation Report

Findings

The ACMA finds that My Net Fone Australia Pty Ltd (ACN 109 671 285) (**My Net Fone**) contravened subparagraph 7(1)(a)(iv) and paragraphs 11(1)(a), 11(1)(c) and 11(3)(b) of the *Telecommunications (NBN Consumer Information) Industry Standard 2018* (the **Consumer Information Standard**) on 25 February 2019 for the reasons specified below.

The ACMA also finds that My Net Fone contravened subsection 128(1) of the *Telecommunications Act 1997* (the **Act**) on 25 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 My Net Fone 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 My Net Fone's website on 25 February 2019;
- that the plans assessed were the \$69.99/month 'NBN Unlimited Bundle' (residential, unlimited data, unlimited home phone) plan (**Plan 1**) and the \$79.99/month business basic speed plan with unlimited data (**Plan 2**); and
- the ACMA's preliminary findings in relation to My Net Fone's compliance with the requirements for KFS and NBN consumer plan advertisements.

My Net Fone provided a response on 2 April 2019 to those preliminary views of the ACMA (the **Response**). My Net Fone did not dispute the preliminary findings in the Response but did provide information indicating that it had revised its KFS and 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 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>complies with the minimum requirements for information.</p>	<p>The KFS did not comply with all of the minimum requirements for information, namely paragraph 8(1)(d) as detailed below.</p> <p>Therefore, the ACMA finds that My Net Fone has contravened subparagraph 7(1)(a)(iv) of the Consumer Information Standard by not meeting the minimum requirements for information as required.</p>
8(1)(d)	<p>A key facts sheet must:</p> <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: 'If your FTTN/B/C connection doesn't allow you to reach the speed tier you are on, My Net Fone may help you choose a plan that matches the speeds you can achieve.'</p> <p>This wording indicated that My Net Fone may advise what action the consumer should take if the maximum speed of the connection to their premises is unable to provide the speed tier of the consumer's NBN plan. The KFS did not set out what remedies were available for a consumer to choose for themselves.</p> <p>Therefore, the ACMA finds that My Net Fone did not include the minimum requirement in paragraph 8(1)(d) of the Consumer Information Standard in the KFS.</p>
11(1)	<p>A retail carriage service provider must:</p>	
11(1)(a)	<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 requires NBN consumer plan advertisements to set out numerical information describing the typical busy period 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>The NBN consumer plan advertisement for Plan 1 did not set out numerical information describing the typical busy period download speed that the average consumer can expect to receive during the busy period.</p>

		<p>The NBN consumer plan advertisement for Plan 1 also did not state the hours over which that speed applies.</p> <p>Therefore, the ACMA finds that My Net Fone has contravened paragraph 11(1)(a) by not setting out numerical information describing the typical busy period download speed, in addition to not stating the hours over which that speed applies, as required.</p>
11(1)(c)	<p>where speed tier information is included as text in advertising material about an NBN consumer plan, include a numerical representation of the typical busy period download speed in a font size that is at least as large as the speed tier information, and is positioned in close proximity to the representation of speed tier information and pricing information about that NBN consumer plan.</p>	<p>The NBN consumer plan advertisement for Plan 2 included speed tier information: 'download speed 12Mbps' and 'upload speed 1Mbps'.</p> <p>While a numerical representation of the typical busy period download speed was provided and was in close proximity, the statement 'standard work hours speed for Basic speed (9am to 5pm) is 11Mbps download' was in a font size which is smaller than the speed tier information.</p> <p>Therefore, the ACMA finds that My Net Fone has contravened paragraph 11(1)(c) by not including a numerical representation of the typical busy period download speed in a font size that is at least as large as the speed tier information in the NBN consumer plan advertisement for Plan 2 as required.</p>
11(3)(b)	<p>Where a retail carriage service provider applies standardised labelling to NBN consumer plans in advertising material to indicate relative speed performance compared to other NBN consumer plans (such as the speed labels described in the Broadband Speed Claims: Industry Guidance), it must:</p> <p>ensure that those definitions can be accessed from a prominent hyperlink on its website, that is positioned in close proximity to where the standardised labels appear as part of the provider's advertising of NBN consumer plans.</p>	<p>The NBN consumer plan advertisement for Plan 2 used standardised labelling to describe the relative download speed performance of plans available to consumers, such as: 'basic', 'standard', 'standard plus' and 'premium'.</p> <p>A speed guide which included the required definitions of the standardised labels was not accessible from a prominent hyperlink that was positioned in close proximity to where the standardised labels appeared in the advertisement.</p> <p>Therefore, the ACMA finds that My Net Fone has contravened paragraph 11(3)(b) by not ensuring the definitions of standardised labels used in the NBN consumer plan advertisements were accessible from a prominent hyperlink in close proximity to where the standardised labels appear, 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>My Net Fone 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, My Net Fone is required to comply with the Consumer Information Standard under subsection 128(1) of the Act.</p> <p>My Net Fone did not meet the requirements for KFS and NBN consumer plan advertisements as described above.</p> <p>Therefore, the ACMA finds that My Net Fone contravened subsection 128(1) of the Act on 25 February 2019 by failing to comply with subparagraph 7(1)(a)(iv) and paragraphs 11(1)(a), 11(1)(c) and 11(3)(b) of the Consumer Information Standard.</p>