

Investigation Report: Aussie Broadband Limited

File No.	ACMA2020/436
Entity	Aussie Broadband Limited (ACN 132 090 192) (Aussie Broadband)
Relevant Legislation	<i>Telecommunications (NBN Consumer Information) Industry Standard 2018</i> (the Consumer Information Standard) <i>Telecommunications Act 1997</i> (the Act)

Findings

The Australian Communications and Media Authority (ACMA) finds that Aussie Broadband (ACN 132 090 192) contravened paragraphs 11(1)(a) and (c) of the Consumer Information Standard on 30 June 2021, and in doing so, has contravened subsection 128(1) of the Act on 30 June 2021.

Background

- On 9 July 2021, the ACMA received a complaint about advertising material relating to Aussie Broadband's high speed NBN consumer plans claimed to be accessed by the complainant on Facebook on 30 June 2021 (Attachment B).
- On 23 August 2021, the ACMA commenced an investigation under paragraph 510(1)(b) of the Act into Aussie Broadband's compliance with section 11 of the Consumer Information Standard.
- On the same day, the ACMA wrote to Aussie Broadband setting out the ACMA's preliminary view that Aussie Broadband had contravened that provision. Aussie Broadband was invited to respond. On 6 September 2021, Aussie Broadband provided the ACMA with a submission in response to the ACMA's preliminary findings.

Findings and Reasons

- Table 1 sets out the ACMA's findings and the reasons for those findings. In making its findings, the ACMA considered the complaint, Aussie Broadband's response of 6 September 2021 and the material referred to in this report.

Table 1 - Compliance with the Consumer Information Standard

Provision of Consumer Information Standard	Requirement	ACMA views and reasons
11(1)(a)	A retail carriage service provider (RSP) must, 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 (business plans), in its description of the NBN	Aussie Broadband supplies NBN services directly to the public and is therefore an RSP within the meaning of section 4 of the Consumer Information Standard. The advertising material (Post 1 and Post 2) in Attachment B accessed by the complainant on 30 June 2021, relates to

Provision of Consumer Information Standard	Requirement	ACMA views and reasons
8(1)(b)	<p>consumer plan in any such advertising material that is published in printed form or online, or broadcast by any means.</p> <p>-----</p> <p>A Key Facts Sheet (KFS) must, where the KFS relates to an NBN consumer plan for a fixed line NBN connection:</p> <p>(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> <p>(ii) and state the hours over which the typical busy period download speed applies.</p> <p>-----</p> <p>busy period means the times between 7 pm and 11 pm in the place where an NBN broadband service is being supplied to a consumer under an NBN consumer plan. [...]</p> <p>retail carriage service provider means a carriage service provider that supplies NBN services directly to consumers. [...]</p> <p>typical busy period download speed means the download speed, expressed as a single number in megabits per second (Mbps), that an NBN broadband service, that is supplied under an NBN consumer plan, typically delivers each hour during the busy period or during standard work hours to a modem located in the consumer's premises</p>	<p>Aussie Broadband's high speed NBN consumer plans, but does not state the hours over which the typical busy period download speed applied as required by paragraph 11(1)(a) and subparagraph 8(1)(b)(ii) of the Consumer Information Standard.</p> <p>The ACMA considers that the actual hours must be included in such advertising material and the use of the phrase "evening speed" in Post 1 and Post 2 does not, by itself, satisfy these requirements.</p> <p>Aussie broadband has confirmed that Post 1 and Post 2 have since been removed.</p> <p>Post 1</p> <p>In Aussie Broadband's submission, it did not dispute the ACMA's preliminary findings in relation to a potential breach of the requirement for Post 1. Aussie Broadband stated that the omission of required information was an oversight and that it has since taken steps to improve its systems and processes to avoid a similar breach from occurring in future.</p> <p>Post 2</p> <p>In Aussie Broadband's submission, it argued that the requirements under paragraph 11(1)(a) did not apply as the advertisement was a customer testimonial that did not refer to a specific NBN consumer plan or a speed-tier as it was intended to advertise several available plans.</p> <p>The ACMA considers that Post 2 triggered the obligation to comply with paragraph 11(1)(a) because the customer testimonial was used to advertise an NBN consumer plan for a fixed line NBN connection. Section 4 of the of the Consumer Information Standard defines an NBN consumer plan to mean a plan for NBN services offered by a RSP to consumers. As the testimonial included speed tier information of 900Mbps, the ACMA considers this to be speed tier</p>

Provision of Consumer Information Standard	Requirement	ACMA views and reasons
	from the location in a data centre at which most frequently accessed internet content is hosted.	information relating to Aussie Broadband's fastest consumer speed tier 'Home Ultrafast'.
11(1)(c)	<p>An RSP must, 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 style="text-align: center;">-----</p>	<p>The advertising material in Post 2 in Attachment B includes the speed tier information 'Our high speed plans' and 'Getting very high downloads~900Mbps!'. A numerical representation of the typical busy period download speed (given as 'typical evening speed 600mbps') is included as text at the bottom of the green box. This text also appears separately above the green box.</p> <p>The font size of the numerical representation of the typical busy period download speed in the green box is so much smaller than the font size of the speed tier information that the only way it can be deciphered is by enlarging the green box some 40-50% in size. While numerical information also appears above the green box, this text is also in a smaller font than the speed tier information.</p> <p>Accordingly, the ACMA's view is that neither of the two representations of the typical busy period download speed in the advertising material satisfy the requirement in paragraph 11(1)(c) of the Consumer Information Standard regarding font size.</p> <p>In Aussie Broadband's submission, it submitted that Post 2 did not meet the threshold requirements that triggered compliance with the obligation because the advertisement does not include speed tier information about a specific NBN plan.</p>
11(2)	The requirements in paragraphs 11(1)(a) and 11(1)(c) do not apply to small online advertising that is not large enough to set out all the information required to be included in advertising material by those paragraphs in a font size referred to in subparagraph 7(1)(a)(v).	Aussie Broadband also submitted that the exemption under 11(2) of the Consumer Information Standard may apply to the advertisement excusing Aussie Broadband from complying with the requirement under paragraph 11(1)(c). However, Aussie Broadband did not provide supporting reasons for this claim.

Provision of Consumer Information Standard	Requirement	ACMA views and reasons
	<p><i>small online advertising means</i> online advertising material in the form of an online strip, banner, title advertising material or pop-up display window.</p>	<p>The ACMA disagrees with Aussie broadband's submissions and considers that Post 2 satisfies the threshold requirement triggering the obligation under paragraph 11(1)(c) because the advertisement included speed tier information as text by stating the speed of 900Mbps. The ACMA also considers that a reference to 900Mbps is speed tier information relating to Aussie Broadband's fastest consumer speed tier 'Home Ultrafast'.</p> <p>The ACMA has considered Aussie Broadband's reliance on the exemption under clause 11(2) in relation to the advertisement. The ACMA considers that the exemption does not apply to Post 2 as it does not meet the definition of small online advertising, which is defined as advertising in the form of an online strip, banner, title advertising material or pop-up displayed window.</p> <p>The ACMA understands the advertisement was a Facebook post, which reasonably could have been tailored to display all information as required under the Consumer Information Standard.</p>

Table 2 - Compliance with the *Telecommunications Act 1997 (the Act)*

Provision of the Act	Requirement	ACMA reason for view that provision has been contravened
Subsection 128(1)	<p>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>	<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 - applies to participants in the telecommunications industry including RSPs. <p>Aussie Broadband is an RSP and a participant in the section of the telecommunications industry to which the Consumer Information Standard applies. Aussie Broadband is therefore required to comply with the Consumer Information</p>

		<p>Standard under subsection 128(1) of the Act.</p> <p>Aussie Broadband's online advertising for its NBN plans did not meet the requirements of paragraphs 11(1)(a) and (c) of the Consumer Information Standard as described in Table 1. Therefore, the ACMA has formed the view that Aussie Broadband has contravened subsection 128(1) of the Act.</p>
--	--	---

Post One (1)

Full Post

Close up of the embedded image

 **Aussie Broadband**
Sponsored ·  

Our high-speed plans will knock your socks off 🧦
👉 Check your availability now!

It's time to power your home with our high-speed plans 🏡
👉 Check your availability now!

*Typical evening speed 600Mbps. Not available at all locations. See the Aussie Broadband website for full terms & conditions. See the featured product review testimonial on the ProductReview website.

★★★★★
"Aussie Broadband's UltraFast plan is great and has a ~4-9 times faster download speed than my previous 100Mbps/40Mbps Telstra plan."
-Sean

PRODUCT REVIEW
COM.AU

 **Aussie Broadband**
Bloody Good Broadband

 MOST SATISFIED CUSTOMERS
NBN PROVIDERS 2019-2020

AUSSIEBROADBAND.COM.AU
🔥 **Ultrafast Internet is Here** 🔥
Check your availability now!

★★★★★

"Aussie Broadband's UltraFast plan is great and has a ~4-9 times faster download speed than my previous 100Mbps/40Mbps Telstra plan."
-Sean

PRODUCT REVIEW
COM.AU

 **Aussie Broadband**
Bloody Good Broadband

 MOST SATISFIED CUSTOMERS
NBN PROVIDERS 2019-2020

*Typical evening speed 600Mbps. Not available at all locations. See website for full terms & conditions. See the featured product review testimonial at <https://bit.ly/33M6PMP>

Post Two (2)

Full Post

 **Aussie Broadband**
Sponsored ·  ...

Our high-speed plans will knock your socks off
 Check your availability now!

It's time to power your home with our high-speed plans 🚀

Check your availability now!

*Typical evening speed 600Mbps. Not available at all locations. See the Aussie Broadband website for full terms & conditions. See the featured product review testimonial on the ProductReview website.



Close up of the embedded image

