

Discounts at What Cost? Communications Services and Promotional Pricing: A Closer Look

Executive Summary
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Faced with the ever-larger part of their budget that goes to pay for communications services, many Canadian consumers are trying to benefit from tempting promotional offers from communications service providers. Unfortunately, those discounts and other promises made to consumers by some providers before a contract is concluded generate all kinds of misunderstandings and disputes.

We think it's time for an assessment. Do consumers have the necessary and adequate information for making informed choices when entering into a communications service contract, regarding advertised prices and discounts, one-time or recurrent fees that can be added to the advertised price, and regarding the terms of promotions?

After focusing on discount offers in the communications services market, we made an overview of the annual reports of Canadian agencies that monitor and handle Canadian consumer complaints about the representations and disclosures made by communications service providers. We explored the main problems reported by consumers in that regard, and the potential consequences of those misunderstandings between consumers and providers. We also examined the federal and provincial legislative and regulatory frameworks for disclosing information applicable to communications service offers. Based on those frameworks, we studied the information available in the online documentation of several communications service providers, to evaluate its clarity, exhaustiveness and accuracy.

Our study has revealed several provider practices likely to hinder consumers from learning essential information for making an informed choice. Those practices result in a consumer not necessarily knowing, from what is advertised in promotional offers, the price he will actually pay for services.

Indeed, providers regularly use price or discount disclosure methods that include terms or limitations of which consumers may not grasp the subtlety, or that omit important facts: advertising a limited-time promotional price without mentioning the regular price; advertising a discount guarantee without explaining it and/or distinguishing it from a price guarantee; advertising a price that applies only if the service is bundled with another; reservations that allow prices, discounts, terms, etc. to be changed. In addition, even when essential information is available, several information dissemination practices in providers' offers greatly limit consumers' ability to learn it. Key information, particularly about fees that will be added to the advertised price, is scattered in multiple tabs or notices hardly visible to the consumer (they never open automatically, or they appear at the bottom of Web pages, or the headings are unclear, etc.). In short, the current

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CIBES de la Mauricie

7000, avenue du Parc, bureau 201, Montréal (Qc) H3N 1X1

T : 514 521-6820 | Sans frais : 1 888 521-6820 | F : 514 521-0736

info@uniondesconsommateurs.ca | www.uniondesconsommateurs.ca

disclosure practices of providers require the consumer to be proactive in finding essential information for evaluating the price of offers, whereas he doesn't necessarily have the willingness and/or the ability (time, knowledge, etc.) to perform such a detailed analysis.

Beyond the manner of their disclosure, we may question the reason for all those fees added to advertised prices. The latter are too often unrepresentative of the actual total cost that consumers will have to pay, which surely doesn't help resolve the problem of surprise bills decried by consumers as well as the CRTC and the CCTS. Those fees are generally charged for equipment that is necessary, and an equipment rental price is often added to the service price (although it's possible at times to acquire the equipment in various other ways). This situation certainly poses challenges for providers in terms of presenting information, but that cannot serve as an excuse for tolerating the current practices of providers in this regard. The provider is responsible for making sure to disclose clearly – with the required explanations – the actual cost of its offers.

Holding discussion groups in Montreal and Toronto among consumers of communications services highlighted the importance of ensuring full price disclosure, notably in the context of tempting promotional offers, since price is by far the most determining factor in shopping for those services. The participants admitted having difficulty understanding and/or becoming fully aware of the providers' offers, particularly because of the long supplementary notes. The multiple fees commonly added to the advertised price, with insufficient disclosure according to the participants, undermines their trust. The participants want a quick and simplified shopping experience, with easy access to the "full price."

We think consumers rightly criticize the precontractual information given by communications service providers. Too often, it is not presented, within promotions, in a manner that informs them adequately of all the contract's essential elements, particularly regarding the actual cost of services offered.

And yet, consumer protection laws and the Competition Act appear at first sight to offer a solid framework: prohibition against false or misleading representations and against omissions of material facts, obligation to advertise a service's full price, etc. There are pros and cons to the generality of those rules: they do cover more problematic situations, but it can be difficult to determine their application in specific factual situations. Despite the many infractions we observed, there seems to be a lack of remedies to correct the situation or penalize delinquent companies.

At the outset, we note that a consumer who detects misleading representations has recourse only if he has entered into a contract. We think government should rather penalize an industry or its members for acting against the interests of consumers as a whole, as is the case when a provider makes misleading precontractual representations. Unfortunately, the current undertakings and interventions of the Competition Bureau and provincial consumer protection agencies are toothless. Much more needs to be done.

The current legal framework doesn't appear deficient in itself, but its interpretation definitely should be clarified, and its application better monitored by the competent authorities.

Unless the industry standardizes on its own initiative, in accordance with legislative requirements and prohibitions, its announcements of prices, services, options and packages, we think the authorities charged with applying the laws should produce interpretation guides or guidelines to correct that lack of standardization, notably by clarifying what constitutes non-misleading information and/or adequate disclosure of information on communications service offers. Establishing precise disclosure obligations, particularly regarding announcements of prices and fees, within the implementing regulations of relevant laws – as do the new regulations regarding price announcements for air travel services – could also prove an interesting path for lawmakers to take.

Those are the main recommendations that conclude our report.

We also recommend that communications service providers ensure that the general impression imparted by their offers is not misleading and that those offers be easily understandable to consumers, particularly by always announcing the full price a consumer will pay to benefit from a service offered, and by grouping in the same place all the information related to the offer's cost.

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