



Australian
Competition &
Consumer
Commission

Comparator websites

A guide for comparator website
operators and suppliers

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Contents

1. Overview.....	2
2. Guiding principles.....	2
3. Facilitate honest, like-for-like comparisons	2
4. Transparency about commercial relationships	3
5. Clear disclosure of who and what is being compared	4
6. Independence of comparator website operators.....	5
7. Fairness of algorithm results	5
8. Information provided by call centres.....	7
9. Nature and extent of comparisons.....	7
10. Value rankings	9
11. Representations about savings	9
12. Timeliness and accuracy of information	10
13. ACCC enforcement actions	11
14. Report poor conduct.....	12
15. More information	12
Glossary.....	12
Comparator websites	12
Products.....	12
Prominent disclosure.....	12
Disclaimer	12

1. Overview

The ACCC has developed this guide to assist operators and suppliers when making decisions about all aspects of comparator services, including in advertising and marketing.

In 2014, the ACCC reviewed the comparator website industry in Australia, recognising the increasingly important role of online markets to the Australian economy. We found that comparator websites can provide important benefits to both consumers and businesses, including facilitating greater competition, choice, convenience, quality, and offering time and cost savings. However, we are concerned that poor conduct by some industry participants may undermine these benefits.

We have identified a number of concerns around the industry's compliance with the Australian Consumer Law (ACL) contained in Schedule 2 of the *Competition and Consumer Act 2010*. In particular, we found that there were a number of areas where the industry was potentially engaging in misleading or deceptive conduct.

Lack of transparency is a key issue of concern in terms of both the material on the operators' websites and the commercial relationships behind-the-scenes.

All operators and suppliers in the comparator website industry have a legal obligation not to engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

This guidance is intended to encourage an industry-wide consideration of business practices to ensure compliance with the *Competition and Consumer Act 2010*, and to promote fair trading and better consumer experiences in this growing sector.

2. Guiding principles

It is illegal for a business to make statements that are incorrect or likely to create a false impression. This includes advertisements or statements in any media (print, radio, television, social media and online) or on product packaging, and any statement made by a person representing your business.

We have developed the following three key principles to assist operators and suppliers when making decisions about all aspects relating to the comparison service:

- Principle 1: Facilitate honest, like-for-like comparisons
- Principle 2: Be transparent about commercial relationships
- Principle 3: Clearly disclose who and what is being compared.

When assessing whether conduct is likely to mislead or deceive, consider whether the *overall impression* created by the conduct is false or inaccurate.

3. Facilitate honest, like-for-like comparisons

Presenting information to consumers in a way that enables them to make like-for-like comparisons is central to ensuring that consumers are not misled about the suitability of products for their needs.

The ACCC recommends that operators and suppliers facilitate like-for-like comparisons for consumers. This can be achieved in a number of ways, and will normally involve the following:

- operators presenting results in descending order with the 'best match' to a consumer's stated needs appearing at the top
- operators disclosing what is meant by a value ranking
- operators making accurate savings representations or claims
- operators having systems in place to ensure the accuracy and quality of product information
- operators disclosing any assumptions used when displaying search results
- suppliers providing timely and accurate information to operators.

4. Transparency about commercial relationships

Commercial relationships between operators and suppliers (particularly those that are undisclosed) may mislead consumers about the independence of the operator and the impartiality of the comparison. Anything that manipulates the presentation of results in a misleading way can cause consumer detriment, erode consumer trust and offer some suppliers an unfair competitive advantage.

Comparator websites typically ask consumers to enter their preferences (search criteria) about the type of product they are looking for so that the website can search the products in the operators' database. By asking consumers to enter their preferences, operators imply that the search results will be displayed according to how well a product matches those preferences. In these circumstances, consumers are entitled to expect that comparison results will be displayed on the basis of 'best match' to their stated preferences, and not be affected by commercial relationships (in other words, that the results of their comparison search will be impartial and independent, with the product that best meets their stated preferences appearing at the top).

As such, operators who allow commercial relationships with suppliers to impact upon the presentation of content or comparison results are likely to be engaging in misleading or deceptive conduct. Further, where an operator makes representations about their impartiality and independence but then produces search results based on preferential relationships with suppliers, it is likely that the representations will be false or misleading in contravention of the ACL.

Some categories of commercial relationships that could mislead or deceive consumers if they are not prominently disclosed include, but are not limited to:

- operators promoting or giving preference to the products of particular suppliers by displaying results on the basis of commercial relationships rather than the consumer's stated preferences
- sales quotas affecting the promotion, recommendation and ranking of products, particularly in circumstances where the operator agrees to sell a specified number of a particular supplier's products in a certain period.

The ACCC recommends that industry players are open and transparent about commercial relationships and do not allow these relationships to affect the presentation of results to consumers. We recommend that:

Operators:

- clearly and prominently differentiate 'sponsored' or 'advertised' products from the organic search results – for example, by using different colours and including a statement that

the product is being 'advertised' or 'sponsored' – otherwise consumers are likely to be misled.

- not allow suppliers to pay them a fee (or receive some other benefit) in exchange for the operator giving preference to those suppliers' products in the search results. There is a risk that disclosure may not be sufficient to overcome any misleading impression created.
- disclose their commercial relationships with suppliers even where the commercial relationship does not affect the comparison results presented to consumers. This helps build consumer trust and increase consumer confidence that they are making a fully informed decision.

Suppliers:

- avoid entering into preferential commercial relationships with operators and should not induce operators to promote their products more than a competitor's.

Suggested words

Disclosing precise or confidential details is not required. Instead, prominent wording that states: '[Comparator website] has commercial relationships with all suppliers whose products it lists.'

and a combination of these examples may suffice, depending on your circumstances:

'[Comparator website] receives the following types of remuneration from suppliers: ...'

'[Comparator website] receives a commission from the following suppliers for each product purchased through [comparator website]: [supplier X], [supplier Y], [supplier Z], ...'

'Commission can be paid by suppliers to [comparator website] either upfront or on a trailing basis as follows: ...'

'Commission received by [comparator website] per sale varies between suppliers.'

'The commercial relationships [comparator website] has with its suppliers, including the payment of remuneration, the type of remuneration paid, the basis on which commission is paid and the variance in commission per sale, does not affect the display of results'.

(Operators should only use the part(s) of this statement relevant to their circumstances)

5. Clear disclosure of who and what is being compared

Accurate representations or claims about, and disclosure of, the nature and extent of comparison services, including market and product coverage, is vital in enabling consumers to make fully informed decisions.

The ACCC recommends that operators:

- clearly disclose the identity of suppliers whose products are being compared and sold
- do not list suppliers or brands whose products are not compared
- do not overstate the percentage of the market being compared; and
- clearly disclose the product range of each supplier that is compared.

6. Independence of comparator website operators

Some operators use a business model where all or the majority of suppliers compared are owned or controlled by an entity that also owns or controls the comparator website. Similarly, some operators may own a stake in some of the suppliers whose products they compare or vice versa.

In the absence of disclosure around such relationships, consumers will not know the extent to which an operator is independent from the suppliers compared or be able to gain a clear picture of how representative of the market the comparison is. Therefore, failure to make adequate disclosure of such relationships is likely to be misleading.

Operators should:

- prominently disclose the identity of the supplier that owns and operates the comparison service. Where the suppliers being compared are owned or controlled by the same entity that owns or controls the operator, this relationship/connection should also be prominently disclosed.
- in circumstances where a controlling entity owns or controls the comparator website as well as listed suppliers, operators should not make representations about their independence or impartiality, as such representations are highly likely to be false and misleading. This also applies where the operator owns a stake in some of the suppliers whose products it compares or vice versa.
- for best practice, remain independent from the suppliers it compares.

Suggested words

As with disclosure of commercial relationships, it is not necessary to disclose precise or confidential details. Instead, prominent wording such as the following may suffice depending on your circumstances:

'[Comparator website] is owned and operated by [controlling entity]. The following suppliers are compared through this website and are subsidiaries of [controlling entity]: [supplier 1], [supplier 2], [supplier 3], ...'

It is important that operators do not let these types of relationships affect the search results displayed to consumers. If the relationships do affect the results, there is a risk that disclosure may not be sufficient to overcome any misleading impression created.

7. Fairness of algorithm results

Operators generally use algorithms to assess product options against a consumer's stated preferences. Algorithms are sophisticated formulas designed to filter data in order to narrow down the number of options presented to consumers.

There is potential for algorithms to be manipulated by operators to display results based on commercial objectives rather than the consumer's stated preferences. This may include programming the algorithm to display results based on commercial relationships with suppliers, or alternatively programming the algorithm to display results reflecting the operator's own commercial objectives. One such example may be presenting different comparison results depending on whether or not consumers identify their current supplier from the outset. In this situation, the operator may have commercial objectives to display no products (or fewer products) from the consumer's current supplier, even where they meet the consumer's needs, to encourage switching. Where this kind of manipulation occurs,

consumers may be misled into thinking that the search results display the products best suited to their needs, when this is not in fact the case. Therefore, the operator is likely to be engaging in misleading or deceptive conduct in contravention of the ACL.

The ACCC also understands that algorithms may have assumptions built into them that will affect the presentation of comparison results. For example, where consumers are comparing private health insurance policies and input information that they are young and single, certain policies may be excluded because the algorithm is programmed to assume that young singles, as a demographic, would not want or need certain cover. While these assumptions may be beneficial in narrowing down the options displayed to consumers, especially where consumers only enter limited information, where they are not prominently disclosed they may mislead consumers as to the availability of products that meet their needs.

Operators should:

- not manipulate algorithms to display results based on their commercial relationships with suppliers (or based on other commercial objectives), rather than displaying the results that best suit the consumer's needs.
- clearly and prominently disclose to consumers any assumptions built into algorithms, and their effect on the results displayed, should be at the time of the presentation of search results.
- disclose adjustments that affect the display of results. For instance, if an algorithm operates in a manner where it displays three products, and is designed to select one product from each of three different suppliers, this should be disclosed. Failure to disclose this may lead to consumers being misled into thinking the displayed results are the three best offers.

Disclosure does not need to go into technical detail and it is not necessary to disclose confidential information. However, disclosure should be sufficient for a reasonable consumer to understand what assumptions the operator has made. In the case of the health insurance example above, operators should disclose that the results have been filtered on the basis of assumptions about the type of cover needed by young singles, and give the consumer the option of viewing those assumptions. This could include a link to another page or a pop-up box that lists the assumptions – for instance, ‘as a young single we have assumed that you do not require the following services [list those services] and the displayed products may exclude these services’. Further, we suggest that operators ask consumers a number of upfront questions to ascertain their preferences and circumstances (including the existence of any exit fees) so as to nuance any assumptions made.

Suggested words

How operators make disclosure about assumptions built into algorithms is likely to vary between industry sectors. Disclosure may include a prominent statement in the search results with a link to more detailed information.

An example of such a statement is as follows:

‘These results are displayed on the basis of the information you have provided as well as assumptions [comparator website] has made about your circumstances. For more information about how these assumptions affect the results displayed, please click on this link: [insert link]’

8. Information provided by call centres

Call centres can provide consumers with a number of benefits over and above the digital platform because call centre staff can delve deeper into the consumer's preferences and access information from additional sources.

However, the ACCC is concerned about the potential for call centre staff to be offered incentives by operators, or to be influenced by internal policies, to recommend products based on commercial benefits to themselves rather than based on a consumer's stated preferences. Where such incentives or policies are in place, operators engage in conduct that is equivalent to allowing commercial relationships with suppliers to impact upon comparison results and run a high risk of misleading consumers and contravening the ACL.

Operators should:

- not offer inducements or incentives to call centre staff to prioritise products that generate higher levels of commission over products that best suit a consumer's stated preferences
- not inform call centre staff of the commission payments the operator receives from its suppliers (unless it is necessary to do so to comply with legal requirements)
- pay call centre staff the same level of commission per sale independent of the product they recommend
- pay call centre staff commission where they recommend that a consumer remains with their current service provider (because it best meets their needs); and
- have processes in place to ensure that suppliers cannot influence call centre staff.

A best practice approach is for operators to have a compliance program in place that includes training call centre staff about their obligations under the ACL, particularly regarding the prohibition against misleading or deceptive conduct and false or misleading representations, and monitoring of calls.

Further, the use of commission-based remuneration may create an incentive for call centre staff to complete a sale quickly, without necessarily offering consumers the product that best meets their needs. Operators should have appropriate structures in place – including reasonable base-salaries rather than 100% commission-based earnings – so that call centre staff are not conflicted in this regard. The ACCC recommends that operators link commission payments to the outcomes of call monitoring and the number of complaints about a particular staff member. The ACCC had similar concerns in its 2012 research into the door-to-door sales industry, where commission-based remuneration models could incentivise risky behaviour, such as the use of high-pressure sales tactics.¹

9. Nature and extent of comparisons

Accurate disclosure of the nature and extent of the comparison service, including the extent of the market and products compared, is vital in enabling consumers to make decisions based on complete information. It is reasonable for consumers to expect that comparator websites provide access to information that is representative of the range of offers available in a certain sector. Consumers are also likely to seek comparator websites that cover a greater proportion of the market. As such, if operators do not appropriately inform

¹ Frost & Sullivan, *Research into the door-to-door sales industry in Australia*, Australian Competition and Consumer Commission, August 2012, p.17.

consumers who or what is being compared, any purchasing decisions may be based on a distorted view of the market.

Failure to make accurate or adequate disclosure about the nature or extent of the comparison service, including market coverage, may involve misleading or deceptive conduct, including by omission, and the making of false or misleading representations.

Operators should:

- avoid making absolute statements such as ‘widest range’, ‘largest number of providers’ and ‘best deals available’, unless such claims can be substantiated and are up-to-date. Representations about the nature and extent of the comparison service must be accurate.
- provide adequate disclosure about market coverage before consumers use the comparison service. The disclosure should relate to the number of suppliers and/or brands whose products are being compared and the product range of each supplier or brand
- ensure that they do not give consumers an incorrect impression about the number of suppliers whose products are compared and the range of their products. If an operator does not list all of a particular supplier’s products, this should also be prominently disclosed. Operators should not list suppliers whose products they do not compare or sell otherwise they are likely to mislead consumers in contravention of the ACL. This may be the case even where the operator simply displays a supplier’s logo on the website.

Suggested words

Disclosure may include a prominent upfront statement about the extent of the market and products compared that:

- outlines the suppliers whose products are being compared
- explains that not all of each supplier’s products are compared (where applicable) and
- provides a more specific indication of the proportion or number of each supplier’s products that are compared.

For example, prominent upfront disclosure including a combination of the following may suffice, depending on your circumstances:

‘[Comparator website] compares products from [supplier X], [supplier Y], [supplier Z], ...’

‘Not all products offered by each supplier are compared.’

‘[Comparator website] compares approximately [X]% of products from [supplier X], [Y]% of products from [supplier Y], [Z]% of products from [supplier Z], ...’

‘[Comparator sells [number] of [supplier X] products.]’

If market coverage is affected by maximum sales quotas whereby a supplier limits the number of its products, or particular products, that the operator can sell in a given period, this should also be disclosed.² For example:

² Maximum sales quotas are often set where the supplier only has the capacity to process or manage a limited volume of sales in a given period.

'[Supplier X], [supplier Y] , [supplier Z], ..., place restrictions on the number of their products that can be sold through [comparator website] each month'

The list of suppliers whose products are being compared should be updated over the period to reflect the effects of maximum sales quotas. This may be done by:

- deleting the suppliers whose products are no longer available for sale (until their products become available again) or
- placing a notice next to the affected suppliers explaining that the sales quota for the supplier has been reached.

10. Value rankings

Many operators allow consumers to rank products on factors beyond price. This includes ranking by 'value rating', 'benefits', 'individual needs' and 'star ratings' (collectively, 'value rankings').

Value rankings can benefit consumers by offering a means of comparison independent of price. However, in order to make an informed decision, consumers need to know how value is assessed. In the absence of understanding how value is assessed, consumers may be misled by value rankings, both by a direct representation that the top ranked product is the best value or fit for their needs, but also by omission in failing to adequately disclose how the value rankings are achieved.

Operators should:

- ensure that consumers can determine for themselves whether the operator's way of assigning value corresponds with their needs
- prominently display, in a way that is easy for consumers to understand, the factors used to calculate value rankings. For example, operators can explain the variables (such as features and price) taken into account and demographic fields affecting the calculation. Simply explaining that value rankings are determined by applying a complex algorithm is unlikely to be sufficient
- depending on the circumstances, provide a prominent link on the comparator website for consumers to click-through to the factors may constitute adequate disclosure.

11. Representations or claims about savings

Savings representations and claims act as a powerful persuasion tool and it is therefore important that any savings claims made by operators are accurate. The ACCC is concerned that operators may make savings representations where they do not have proper grounds for doing so, in particular where it is implied that consumers are able to get an identical product for a lower price.

Savings representations and claims tend to fall into two broad categories:

- Upfront statements about how much consumers generally will save or have saved by using the comparison service.
- Statements about how much a particular consumer will save by using the comparison service, presented in comparison results generated by the website or conveyed by call centre staff.

Operators who make inaccurate, inflated or unqualified savings claims will most likely be making false or misleading representations and/or engaging in misleading or deceptive

conduct in contravention of the ACL. Similarly, operators who make savings representations when the comparison is against a lower quality product or a product with less features (in other words, they are not comparing 'like with like') may also be engaging in misleading or deceptive conduct. The ACCC considers that reasonable consumers would expect that savings representations relate to switching between like-for-like products.

In many cases, consumers who are locked into a fixed term contract may have to pay exit fees to their existing providers when switching. The size of such exit fees is likely to affect the savings a consumer can make by switching providers. As is described in more detail below, operators can assist consumers to make a fully informed switching decision through disclosure and by allowing exit fees to be included as part of the savings calculation.

Operators should:

- avoid making definitive or absolute statements about how much a consumer can save by using the comparison service
- only make savings representations when comparing like-for-like products.
- prominently disclose that any exit fees consumers may need to pay to their current supplier will affect the savings they can achieve by switching.

The following two examples show the types of statements that may be acceptable and those that are unlikely to be:

Definitive statement – likely to be misleading

'You will save \$500 per year by switching through [comparator website]'

Qualified statement – unlikely to raise concerns (depending on the circumstances)

'[Person A] saved \$500 per year by switching through [comparator website] to a like/substantially similar product. You may also be able to save by switching, but this will depend on your individual circumstances'

Operators should, in result listings:

- not make definitive or absolute savings claims where consumers have not provided any information about their current usage or existing product
- provide the actual price of the product in addition to any savings claims, even where consumers have provided information about their current usage and such savings can be calculated on information provided about the customer's existing product
- provide consumers with the option of entering any exit fees they may need to pay to their current supplier, to produce a more accurate savings calculation.

Where exit fees may apply, but are unknown, qualify any representations with a statement that the savings are exclusive of any exit fees which may be payable, and direct consumers to check with their current supplier whether exit fees apply.

12. Timeliness and accuracy of information

The display of accurate product information by operators in terms of product availability, product terms and conditions and product classification is vital to enable consumers to compare like-for-like. Further, consumers would reasonably expect information on comparator websites to reflect actual offers available in the market.

Where quality assurance practices are insufficient, this could lead to incorrect information or results being displayed, which is likely to mislead or deceive consumers. While operators are often dependent upon receiving information from suppliers to inform the content they present, operators will be responsible for any representations made where the operator adopts or endorses that information.

Operators should:

- ensure that they keep information about product availability and product terms and conditions (including price) up-to-date. Operators should have processes in place to ensure that any changes or updates to the products that they list are incorporated into the information given about the products (including whether the product is still available) at the time any changes take effect. These processes should include, where possible, ensuring that information is obtained from suppliers well in advance of the offer being made available to, or removed from, the market. Prominent disclosure by operators about when the product information was last updated may also assist consumers.
- ensure that products are appropriately classified. For example, in the private health insurance space, consumers may be able to filter products based on whether they offer low, medium or high coverage. Operators should have processes in place so that each category contains products with comparable product features. Factors taken into account when allocating products to a particular category should also be prominently disclosed. Otherwise, operators risk misleading consumers as to the quality or characteristics of the product they are being presented with.

Suppliers should:

- ensure that the information provided to operators is accurate, complete, and reflects the actual offer available.
- update operators of any changes to their product offerings on a timely basis, well in advance of the changes becoming available to the market.

13. ACCC enforcement actions

The ACCC has previously taken enforcement action in relation to misleading or deceptive conduct by operators, and will continue to do so, including:

- **Compare The Market** – In August 2014 Compare The Market Pty Ltd paid a penalty of \$10,200 following the issue of an infringement notice by the ACCC in relation to claims made in its advertising that it compares more health funds than any other website in Australia.
- **Energy Watch** – In 2012 the Federal Court ordered Energy Watch Pty Ltd to pay \$1.95 million for misleading advertising and its former CEO, Mr Benjamin Polis, to pay \$65,000 for his voiceover role in relation to misleading radio advertisements. The misleading advertising related to representations about the nature of the Energy Watch service and the savings consumers would make by switching energy retailers.
- **iSelect** – In 2007 the ACCC accepted a court enforceable undertaking from iSelect Health Pty Ltd following concerns that iSelect made various representations that were likely to mislead consumers as to the range of health insurance policies it compared when recommending a policy.

14. Report poor conduct

Poor conduct by players in the comparator website industry (including relevant conduct by suppliers) is likely to damage consumer trust and be detrimental to the industry as a whole. Businesses or consumers with relevant information about conduct referred to in this guidance are encouraged to report it to the ACCC.

15. More information

Contact the ACCC: 1300 302 502 or www.accc.gov.au

Glossary

Comparator websites

Comparator websites are sites that generally compare products offered by a range of suppliers. Comparator websites frequently include multiple products offered by the same supplier.

In many cases, operators use an integrated multi-channel consumer interface with a website to initially engage the consumer and drive demand to a call centre.

Usually, operators will:

- operate a website or other digital platform such as an app (and may include a call centre) and
- compare products across a product category according to specific characteristics provided by the consumer.

Products

Goods and services are termed collectively as products. Service providers and suppliers of goods are termed collectively as suppliers. While this guidance is aimed primarily at operators that compare services as well as at service providers, it also has broad application to operators that compare goods and to suppliers of goods.

Prominent disclosure

Prominent disclosure refers to clearly presented and easily accessible information that a reasonable consumer using the comparison service would expect to rely on in making a purchasing decision. Some operators may employ pop-up boxes for this purpose where space is limited. Whether or not this amounts to 'prominent disclosure' will depend on the circumstances of the particular case.

In the ACCC's view, disclosure outlined in a set of terms or conditions located in a separate section of the website or in fine print at the bottom of the web page is not prominent disclosure.

Further, operators should note that the disclosure recommendations set out in this guidance apply both to presenting information on the website and to providing information to consumers over the phone.

Disclaimer

This guidance has general application only and is not a substitute for independent legal advice. Professional advice should be sought for any specific questions or concerns.

Operators and suppliers should also be aware that some industries, such as financial services (including insurance), are subject to industry-specific legislation which this guidance does not address. Operators and suppliers should therefore familiarise themselves with the legislation that applies to their particular industry and ensure that they comply with their obligations. In the case of financial services, the consumer protection provisions that apply under the relevant legislation mirror many of the key provisions in the ACL, such as the prohibition against misleading or deceptive conduct.
