

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B

by

Internode Pty Ltd ACN 052 008 581

Person giving the undertaking

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Internode Pty Ltd ACN 052 008 581 (Internode) of 65 Waterloo Road, Macquarie Park, 2113, in the State of New South Wales for the purposes of section 87B of the Competition and Consumer Act 2010 (Act).
2. Internode, among other services offered to consumers, is a supplier of retail fixed-line broadband services supplied over the National Broadband Network (NBN). Internode supplies NBN broadband services under the 'Internode' brand (NBN broadband services).

Background

Internode's NBN broadband services

3. Since 16 December 2015, Internode has promoted and offered to consumers NBN broadband services, using fibre to the node (FTTN) and fibre to the building (FTTB) technology. Consumers can select from a range of NBN broadband plans offered by Internode with different maximum internet speeds. The maximum internet speeds offered by Internode reflected the wholesale access speed tiers that it purchased from NBN Co Limited (NBN Co).
4. Broadband services using FTTN and FTTB technologies can be subject to performance limitations to such an extent that consumers are unable to achieve the maximum internet speeds of the NBN Co wholesale access speed tiers.
5. NBN Co made performance information available to Internode in relation to services supplied over FTTN and FTTB technologies after those services had been connected. Internode did not independently test the performance of its consumers' individual connections.
6. Internode promoted and offered NBN FTTN and FTTB broadband plans on the basis of providing internet speeds up to the following download and upload speeds, based on the wholesale access speed tiers offered by NBN Co:
 - a. 100 megabits per second (Mbps) download and 40 Mbps upload (100/40 Plan);
 - b. 50 Mbps download and 20 Mbps upload (50/20 Plan);
 - c. 25 Mbps download and 5 Mbps upload (25/5 Plan); and
 - d. 12 Mbps download and 1 Mbps upload (12/1 Plan),
(collectively, the Speed Plans).
7. Internode marketed:
 - the 12/1 Plan as the "Bronze" plan, which cost consumers between \$49.95 and \$89.95 per month depending on the data allowance included in the plan;
 - until 12 December 2017, the 25/5 Plan as the "Silver" plan, which cost consumers between \$54.95 and \$94.95 per month depending on the data allowance included in the plan;
 - the 50/20 Plan as the "Gold" plan, which cost consumers between \$54.99 and \$104.95 per month depending on the data allowance included in the plan; and
 - the 100/40 Plan as the "Platinum" plan, which cost consumers between \$64.99 and \$114.95 per month depending on the data allowance included in the plan.

Maximum Attainable Speeds

8. The highest internet speed that could be delivered to each consumer given the technical capabilities of their NBN connection is defined for the purposes of this undertaking as the **Maximum Attainable Speed**. Maximum Attainable Speeds are measured by NBN Co and were generally made available to Internode within two weeks of activation of a Speed Plan. Consumers' Maximum Attainable Speeds cannot be measured prior to a consumer connecting to the NBN.
9. Maximum Attainable Speeds are affected by many factors including the length and quality of copper wiring from the consumer's premises to the node (for FTTN) or basement (for FTTB), electrical interference, and the quality and layout of cabling and copper wiring in the consumer's premises.
10. The speeds the consumer receives may be limited by the Speed Plan they have chosen. For example, a consumer who is on a 100/40 Plan and whose Maximum Attainable Speed is 65 Mbps download will only receive internet speeds up to 65 Mbps download. If that same consumer is on a 50/20 Plan, they will receive internet speeds up to 50 Mbps download because their Speed Plan caps their speed even though their NBN connection can support higher speeds.

Conduct of concern

11. Between 16 December 2015 and 30 June 2017, Internode promoted the Speed Plans online, on television, in newspapers and on radio. Internode's promotion of Speed Plans included statements such as "*NBN Platinum: up to 100/40Mbps connection speeds*" which represented to consumers that their NBN connections could deliver speeds up to the maximum speed of their Speed Plan.
12. Between 16 December 2015 and 30 June 2017, Internode sold 36,786 Speed Plans to residential and small business consumers using the NBN's FTTN or FTTB technology.
13. 3,127 of those 36,786 consumers (9%) could not obtain internet speeds up to the maximum speed of their Speed Plan because the consumer's NBN connection was not capable of delivering it. For the purposes of this undertaking, residential and small business consumers who, within the first two weeks of data being available to Internode for each consumer, had a Maximum Attainable Speed lower than the maximum speed of their Speed Plan are defined as **Affected Consumers**.
14. Table 1 below shows:
 - a. the number of Internode consumers on each Speed Plan who were connected using NBN FTTN technology between 16 December 2015 and 30 June 2017;
 - b. the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of their Speed Plan; and
 - c. of the total in 14(b), the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of lower Speed Plans.

Table 1: Maximum Attainable Speeds of Internode's FTTN consumers between 16 December 2015 and 30 June 2017

Speed Plan	Number of consumers on Speed Plan	Number and percentage (%) of consumers on each Speed Plan with Maximum Attainable Speeds less than:			
		100 Mbps download and 40 Mbps upload	50 Mbps download and 20 Mbps upload	25 Mbps download and 5 Mbps upload	12 Mbps download and 1 Mbps upload
100/40 Plan	5,037	1,720 (34%)	479 (28%)	36 (2%)	1 (<1%)
50/20 Plan	6,509		1,078 (17%)	47 (4%)	1 (<1%)
25/5 Plan	14,620			207 (1%)	0
12/1 Plan	7,943				5 (<1%)

15. Table 2 below shows:

- the number of Internode consumers on each Speed Plan that were connected using NBN FTTB technology between 16 December 2015 and 30 June 2017;
- the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of their Speed Plan; and
- of the total in 15(b) the number and percentage (%) of consumers on each Speed Plan whose NBN connection had a Maximum Attainable Speed less than the maximum speed of lower Speed Plans.

Table 2: Maximum Attainable Speeds of Internode's FTTB consumers between 16 December 2015 and 30 June 2017

Speed Plan	Number of consumers on Speed Plan	Number and percentage (%) of consumers on each Speed Plan who have Maximum Attainable Speeds less than:			
		100 Mbps download and 40 Mbps upload	50 Mbps download and 20 Mbps upload	25 Mbps download and 5 Mbps upload	12 Mbps download and 1 Mbps upload
100/40 Plan	639	78 (12%)	26 (33%)	2 (3%)	0
50/20 Plan	511		26 (5%)	0	0
25/5 Plan	1,027			13 (1%)	0
12/1 Plan	500				0

Actions by Internode

16. In July 2017 and since November 2017, Internode sent emails to Affected Consumers who had a Maximum Attainable Speed below 80% of the speeds advertised in their Speed Plan and invited them to move to a lower speed plan.

17. The ACCC does not consider this remediation to be sufficient.

Australian Consumer Law

18. The Australian Consumer Law (ACL) is contained in Schedule 2 to the Act.

19. Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.

20. Section 29(1)(b) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any

means of the supply or use of goods or services make a false or misleading representation that services are of a particular standard, quality, value or grade.

21. Section 29(1)(g) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits.

Admissions

22. By the conduct described above, from 16 December 2015 to 30 June 2017, in the promotion of each Speed Plan, Internode represented to consumers that Internode was capable of delivering internet services up to the maximum speeds of each Speed Plan when this was not the case.
23. Internode admits that the conduct described above is likely to have contravened sections 18, 29(1)(b) and 29(1)(g) of the ACL.

Commencement of this undertaking

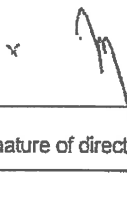

24. This undertaking comes into effect when:
- a. this undertaking is executed by Internode; and
 - b. this undertaking so executed is accepted by the ACCC (the **commencement date**).
25. Upon the commencement date, Internode undertakes to assume the obligations set out in Attachment A for the purposes of section 87B of the Act.
26. This undertaking ceases to have effect after a period of three years from the commencement date.

Acknowledgments

27. Internode acknowledges that:
- a. the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - b. the ACCC may, from time to time, make public reference to this undertaking, including in news media statements and in ACCC publications;
 - c. the ACCC may make public reference to the information contained in the report provided by Internode as set out in Attachment A of this undertaking in the section titled 'Undertaking as to reporting', including in news media statements and in ACCC publications; and
 - d. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an undertaking

Executed by Internode Pty Ltd ACN 052 008 581 pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary
DAVID TEOM	Stephen Banfield
Name of director (print)	Name of director/company secretary (print)
14/03/2018	16/03/2018
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

19/03/2018

Date

and signed on behalf of the Commission:



Acting

Chairman

Date

19/03/2018

Attachment A – undertakings for the purposes of section 87B of the Act

1. Each of the undertakings contained in paragraphs 2 and 3 of this Attachment are subject to paragraph 4 below.

Undertaking as to remediation for current Affected Consumers

2. Internode undertakes that, for each Affected Consumer who entered into a Speed Plan between 16 December 2015 and the commencement date, and to whom, as at the date Internode sends the email or letter set out in paragraphs (a)(i) and (b)(i) below, Internode continued to provide a Speed Plan:
 - a. for each Affected Consumer who entered into a 25/5 Plan, 50/20 Plan or 100/40 Plan, Internode will:
 - i. by no later than 27 April 2018, send an email or, where Internode does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. allow the consumer to remain on their current Speed Plan with no refund;
 - B. move the consumer to a lower Speed Plan of their choice and provide a refund as set out in Attachment B; or
 - C. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract and receive a refund as set out in Attachment B; and
 - b. for each Affected Consumer who entered into a 12/1 Plan, Internode will:
 - i. by no later than 27 April 2018, send an email or, where Internode does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer, allow the consumer to:
 - A. remain on their current Speed Plan with no refund; or
 - B. exit the contract (and any associated bundle) without incurring any associated exit costs under their contract with no refund.

Undertaking as to remediation for former Affected Consumers

3. Internode undertakes that, for each Affected Consumer who entered into a Speed Plan on or after 16 December 2015 but to whom, as at the date Internode sends the email or letter set out in paragraph (a)(i) and (b)(i) below, Internode no longer provided a Speed Plan:
 - a. for each Affected Consumer who entered into a 25/5 Plan, 50/20 Plan or 100/40 Plan, Internode will:
 - i. by no later than 27 April 2018, send an email or, where Internode does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed;
 - ii. where the consumer elects, refund any termination fee the consumer paid when exiting their contract; and
 - iii. where the consumer elects, provide a refund as set out in Attachment B; and
 - b. for each Affected Consumer who entered into a 12/1 Plan, Internode will:
 - i. by no later than 27 April 2018, send an email or, where Internode does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed; and

- ii. where the consumer elects, refund any termination fee the consumer paid when exiting their contract.

Undertaking as to previously remediated Affected Consumers on Internode Speed Plans

4. Internode undertakes that, for each Affected Consumer to whom Internode had, in July 2017 and since November 2017:
 - a. offered each of the following options:
 - i. moving to a lower Speed Plan; and
 - ii. remaining on their current Speed Plan,

Internode will:

- b. for consumers who moved to a lower Speed Plan and whose Maximum Attainable Speed is equal to or greater than the maximum speed of their new Speed Plan:
 - i. by no later than 27 April 2018, send an email or, where Internode does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. provide the consumer with a refund as set out in Attachment B; or
 - B. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract and provide a refund as set out in Attachment B;
- c. for consumers on a 25/5 Plan or 100/40 Plan who chose to remain on their current Speed Plan or who chose to move to a lower Speed Plan where they still could not achieve the maximum speeds of their new Speed Plan:
 - i. by no later than 27 April 2018, send an email or, where Internode does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. allow the consumer to remain on their current Speed Plan with no refund;
 - B. move the consumer to a lower Speed Plan and provide a refund as set out in Attachment B; or
 - C. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract and provide a refund as set out in Attachment B; and
- d. for consumers on a 12/1 Plan:
 - i. by no later than 27 April 2018, send an email or, where Internode does not have a consumer's email address, a letter to the consumer in a form approved by the ACCC, which states the consumer's Maximum Attainable Speed and sets out remediation options for the consumer; and
 - ii. in accordance with the remediation option selected by the consumer:
 - A. allow the consumer to remain on their current Speed Plan with no refund;
 - B. allow the consumer to exit the contract (and any associated bundle) without incurring any associated exit costs under their contract.

Undertaking as to future consumers

5. Internode undertakes that for a period of three years from the commencement date it will not, in trade or commerce, represent that it can or will provide consumers with FTTN or FTTB connections with download and upload speeds at the maximum speeds specified in the consumer's Speed Plan unless it also carries out the steps in paragraph 6 below.

6. Subject to paragraph 5, Internode undertakes for the purposes of section 87B of the Act that for a period of three years from the commencement date it will, within the first four weeks of data being available to Internode for each consumer's Maximum Attainable Speed, check each Internode consumer's Maximum Attainable Speed. If the Maximum Attainable Speed is below the advertised maximum speed of the consumer's Speed Plan, Internode will, within the first four weeks of each consumer's Maximum Attainable Speed data being available:
 - a. for each Affected Consumer who entered into a 25/5 Plan, 50/20 Plan or 100/40 Plan:
 - i. notify the consumer of their Maximum Attainable Speed; and
 - ii. provide the consumer with the options to:
 - A. remain on their current Speed Plan with no refund;
 - B. exit their contract (and any associated bundle) without cost and provide a refund to the consumer as set out in Attachment B; and
 - C. move to a lower Speed Plan of their choice and provide a refund to the consumer as set out in Attachment B.
 - b. for each Affected Consumer who entered into a 12/1 Plan:
 - i. notify the consumer of their Maximum Attainable Speed; and
 - ii. provide the consumer with the options to:
 - A. remain on their current Speed Plan with no refund; and
 - B. exit their contract (and any associated bundle) without cost with no refund.

Notification

7. Internode undertakes that it will, within 20 business days of the commencement date, publish or cause to be published on its website for a period of 90 consecutive days a notice in the form of Attachment C to this undertaking, which will be accessible to all Affected Consumers for whom Internode has a record of their IP address via a link contained in a corrective notice in the top third of the:
 - a. Internode home page at: <https://www.internode.on.net/>;
 - b. Internode NBN web page at: <https://www.internode.on.net/residential/broadband/nbn/>; and
 - c. Internode business NBN web page at: <https://www.internode.on.net/business/internet/nbn/>.
8. The corrective notice displayed on the web pages indicated at paragraph 7 will be accessible to all Affected Consumers for whom Internode has a record of their IP address and will:
 - a. include the words:

'Have you purchased an Internode NBN plan since 16 December 2015? You may be entitled to a partial refund or be able exit your contract without cost.

Internode is providing remedies to consumers who purchased NBN internet plans where their fibre to the node (FTTN) or fibre to the building (FTTB) connection was not capable of delivering the speeds promised. We acknowledge that by doing so, we likely breached the Australian Consumer Law.

Internode will be contacting affected consumers by 27 April 2018 to offer options including a refund, moving to a lower speed plan or exiting their contract.

Click here [insert hyperlink to notice in the form of Attachment C] for more information, or contact us on [number].';
 - b. be bordered by a black box;
 - c. not be displayed as a "pop-up" or "pop-under" window;
 - d. be crawlable (i.e. its contents may be indexed by a search engine); and

- e. be prominent in size.

Undertaking as to amendments to correspondence and contacting Affected Consumers

- 9. Internode undertakes that it will only vary the content of Attachment C to this undertaking with the prior written consent of the ACCC.
- 10. If Internode does not receive a response from an Affected Consumer to the communications set out in paragraphs 2 and 4, Internode will call and/or SMS the current Affected Consumer in order to provide the information contained in those communications.

Undertaking as to reporting

- 11. Between 29 May 2018 and 1 June 2018, Internode will provide a report to the ACCC setting out:
 - a. the number of current Affected Consumers for each Speed Plan falling within paragraph 2 above and for each of these categories of Affected Consumers:
 - i. the number of Affected Consumers that chose each remedy option set out in paragraph 2 above; and
 - ii. the total amount of refunds provided;
 - b. the number of former Affected Consumers for each Speed Plan falling within paragraph 3 above and for each of these categories of Affected Consumers:
 - i. the number of Affected Consumers that elected to receive a refund; and
 - ii. the total amount of refunds provided; and
 - c. The number of previously remediated Affected Consumers for each Speed Plan falling within paragraph 4 above and for each of these categories of Affected Consumers:
 - i. the number of Affected Consumers that chose each remedy option set out in paragraph 4 above; and
 - ii. the total amount of refunds provided.

Attachment B - compensation for Affected Consumers

1. Where a consumer elects to receive a refund, Internode undertakes to provide refunds in accordance with, for consumers who entered into a Speed Plan:
 - a. between 16 December 2015 and 20 July 2016, Table A below;
 - b. between 21 July 2016 and 12 December 2017, Table B below; and
 - c. on or after 13 December 2017, Table C below.
2. Where an Affected Consumer accepts an offer of a refund from Internode, the refund amount is to be determined by reference to the amount the consumer paid for their Speed Plan and the amount the consumer would have paid for the fastest Speed Plan which would have allowed them to receive the maximum speed of their Speed Plan.

Bundles and data allowances

3. The refund structure in Tables A to C below applies to both Speed Plans and bundles that include a Speed Plan. Where relevant, Tables A to C distinguish between refund amounts for consumers who have a different data allowance for a particular Speed Plan.
4. A data allowance is the amount of download and upload activity included each month in a Speed Plan.

Form of refunds

5. Internode undertakes to offer the refunds as either a direct payment or a credit, at the consumer's discretion.

Table A: Compensation for Affected Consumers who entered into a Speed Plan between 16 December 2015 and 20 July 2016

Consumer's Speed Plan	Consumer's refund based on Maximum Attainable Speed (MAS)		
	MAS <100/40 and ≥50/20	MAS <50/20 ≥25/5	MAS <25/5
100/40 Plan	\$10 per month	\$20 per month	\$25 per month
50/20 Plan		\$10 per month	\$15 per month
25/5 Plan			\$5 per month
12/1 Plan	No refunds applicable to 12/1 Plan		

Table B: Compensation for Affected Consumers who enter into a Speed Plan between 21 July 2016 and 12 December 2017

Consumer's Speed Plan	Consumer's refund based on Maximum Attainable Speed (MAS)		
	MAS <100/40 and ≥50/20	MAS <50/20 ≥25/5	MAS <25/5
100/40 Plan	\$10 per month	\$20 per month	<ul style="list-style-type: none"> 100 gigabyte (GB) data allowance plan: \$25 per month >100 GB data allowance plans: \$30 per month
50/20 Plan		\$10 per month	<ul style="list-style-type: none"> 100GB data allowance plan: \$15 per month >100 GB data allowance plans: \$20 per month
25/5 Plan			<ul style="list-style-type: none"> 100GB data allowance plan: \$5 per month >100 GB data allowance plans: \$10 per month
12/1 Plan	No refunds applicable to 12/1 Plan		

Table C: Compensation for Affected Consumers who enter into a Speed Plan on or after 13 December 2017

Consumer's Speed Plan	Consumer's refund based on Maximum Attainable Speed (MAS)		
	MAS <100/40 and ≥50/20	MAS <50/20 ≥25/5	MAS <25/5
100/40 Plan	\$20 per month	\$25 per month	<ul style="list-style-type: none"> 100GB data allowance plan: \$25 per month >100 GB data allowance plans: \$30 per month
50/20 Plan		\$5 per month	<ul style="list-style-type: none"> 100Gb data allowance plan: \$5 per month >100 Gb data allowance plans: \$10 per month
12/1 Plan	No refunds applicable to 12/1 Plan		

Attachment C – corrective notice

Maximum NBN Speeds – Refund Offer for Internode customers

Since 16 December 2015, Internode has promoted and offered NBN internet plans using the NBN's fibre to the node (FTTN) and fibre to the building (FTTB) technology to consumers with the choice to select from a range of internet speeds.

Internode promoted NBN internet plans to consumers by highlighting the maximum speeds available to consumers on each Speed Plan. The maximum speeds promoted by Internode reflected the maximum speeds of the wholesale internet services that it purchased from NBN Co Limited.

Internode offered the 12/1 Plan as the "Bronze" plan, the 25/5 Plan as the "Silver" Plan, the 50/20 Plan as the "Gold" Plan and the 100/40 Plan as the "Platinum" plan. Consumers paid up to \$30 more per month for the "Platinum" plan.

Internode consumers' maximum speeds

Generally, within two weeks of activation of a consumer's NBN speed plan, NBN makes available to Internode the maximum speed measurement the consumer can achieve.

Internode has reviewed the information made available by NBN and discovered it could not provide many of its consumers with internet speeds up to the maximum speed of their speed plan because the consumer's NBN connection was not capable of delivering it.

Internode accepts that this conduct was likely to have contravened the Australian Consumer Law, because NBN speed plans were promoted as delivering certain speeds where consumers could not receive those speeds. In response to concerns raised by the ACCC, Internode has provided a court enforceable undertaking to the ACCC that it will not engage in similar conduct in the future.

Remedies available to affected Internode customers

Affected consumers may have the following options available to them:

- remain on their current plan with no refund
- move plans and receive a refund for the extra charges paid
- exit their plan without cost and receive a refund for the extra charges paid.

Former Internode consumers may also be eligible to receive a refund.

If you are an affected consumer, Internode will contact you by email or post by 27 April 2018. If you would like further information, please contact us on [number].