

Discounts at What Cost?

Communications Services and Promotional Pricing:
A Closer Look

Final Report of the Research Project
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Union des consommateurs, *Strength through Networking*

Union des consommateurs is a non-profit organization comprised of 13 consumer rights groups.

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and improving consumers' economic, social, political and environmental living conditions.

UC's structure enables it to maintain a broad vision of consumer issues while developing in-depth expertise in certain programming sectors, particularly via its research efforts on the emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in their community.

UC acts mainly at the national level, by representing the interests of consumers before political or regulatory authorities, in public forums or through class actions. Its priority issues, in terms of research, action and advocacy, include the following: household finances and money management, energy, issues related to telephone services, broadcasting, cable television and the Internet, public health, financial products and services, and social and fiscal policies.

Introduction

Communications services are more and more costly to consumers. The large majority of Canadian households subscribe to the four main communications services: residential and wireless phones, Internet access and cable television. Households reportedly pay an average of \$218.42 monthly¹ for those services, the cost of which has been increasing constantly for several years. While the CPI increased by an average of 1.6% annually between 2006 and 2016, the prices of communications services have increased annually by 2 to 4.3% depending on the service, during the same period².

Faced with the ever-larger part of their budget that goes to pay for those services, consumers are searching for ways to save money, particularly by changing their service provider to benefit from offers at better value. Indeed, rarely do communications service providers refrain from “stealing” customers from the competition by means of tempting promotions. Discount offers, notably by bundling services with the same provider, are highly popular among Canadian consumers: In 2016, 9.6 million Canadian subscriptions included two or more communications services with the same provider³.

Unfortunately, the promises made to consumers by certain providers before a contract is entered into generate all kinds of misunderstandings. Complaints made before the Commission for Complaints for Telecom-television Services (CCTS) about misleading disclosures or non-disclosure of important information have proliferated for several years and now constitute the problem most often reported to the Commission. Unkept promises, hidden fees, important information that is either undisclosed or difficult for consumers to access and understand before entering into a contract, and mysterious price hikes during the contract term: Consumers are at times trapped in agreements they concluded without fully understanding them.

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? Our research aimed at examining the clarity, exhaustiveness and accuracy of promotional information provided to consumers by communications service providers, with regard to advertised prices and discounts, to one-time or recurrent fees that can be added to the advertised price, and to 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 then studied the main federal and provincial legislative and regulatory frameworks that apply to the representations of communications service providers. We also conducted a

¹ **CRTC**, *Communications Monitoring Report 2017*, p.42, online: <https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/cmr2017.pdf> (consulted on February 15, 2018).

² *Ibid.*, p.51.

³ *Ibid.*, p.45.

field survey to evaluate the promotional information given by providers. We studied the information available in the online documentation of eight communications service providers, chosen mainly because of their importance on the market and their type (major and independent providers).

We examined not only the disclosure of prices, discounts, and one-time and recurring fees that can be added to the advertised price, but also other essential information related to communications service contracts. Moreover, given their prevalence in providers' documentation, we paid special attention to providers' use of fine-print disclaimers as part of their promotional content.

Based on those data, our report will assess the various disclosure practices of providers: Is all the essential information on the offers disclosed by the providers? Is it disclosed in a manner that reasonably enables consumers to find and understand it?

We will report subsequently on the results of four discussion groups held among consumers in Montreal and Toronto, to learn whether consumers thought they were correctly informed of the agreement's essential elements and were able to identify and understand them in the providers' promotional documents.

Lastly, we submitted highlights of our field survey and discussion groups to stakeholders in order to learn their viewpoints on the subject. We will report on the viewpoints we received regarding the problems encountered by consumers, the disclosure practices of certain providers, and the appropriateness of the legislative and regulatory framework in place.

The summary and conclusions of our research will be followed by our recommendations.

1. The Communications Services Market: Ubiquitous Discounts

Discount offers⁴ constitute a common marketing practice to attract consumers and generate sales. It has become ubiquitous in retail trade. We have only to think of “Boxing Day,” “Black Friday” or “Cyber Monday,” events very popular among consumers, and exemplifying that practice. In the United Kingdom, sales of discounted products reportedly make up almost one-quarter of retail sales and account for at least £95 billion (CA\$164 billion)⁵.

Far from being limited to retail sales, discounts are also prevalent among service providers, as in the communications market. Discount offers are so numerous in the latter that the British regulatory agency, the Office of Communications (Ofcom), wrote several pages about it in its 2016 annual report on the British telecommunications market. Ofcom observed that the prevalence of discounts on the market, and the amounts involved, had constantly increased in recent years⁶.

We find the same trend in Canada. In its latest annual communications monitoring report, The Canadian Radio-television and Telecommunications Commission (CRTC) noted the large number of bundled discounts in recent years⁷. Those discounts are offered for subscriptions to several services with the same provider. In principle, this type of offer results in bundled services provided at a lesser price than would be paid for the sum of each individual service⁸. In 2016, no less than 9.6 million Canadians had subscriptions for bundled communications services⁹.

Indeed, Canadian consumers regularly look for promotional offers from providers, because of the high cost of communications services.

Those high costs are rising fast. Expenditures related to communications services have been increasing for several years. While the CPI increased by an average of 1.6% annually

⁴ “Diminution du prix d'un bien ou d'un service sur un prix préalablement proposé ou facturé”. **LAROUSSE**, *Rabais*, online: <http://www.larousse.fr/dictionnaires/francais/rabais/65821> (consulted on December 10, 2017).

⁵ **PLANETRETAIL.NET**, *UK Discount Pricing Strategies: Optimising operational, merchandising & promotional plans*, online: <http://www.netsuite.co.uk/portal/uk/pdf/report-planetretail-uk-discount-pricing-strategies.pdf> (consulted on March 20, 2018).

⁶ **OFCOM**, *The Communications Market 2016*, pp.139-141, online: https://www.ofcom.org.uk/data/assets/pdf_file/0026/26648/uk_telecoms.pdf (consulted on March 20, 2018).

⁷ **CRTC**, *Communications Monitoring Report 2017*, *op. cit.* note 1, pp.44-45. The CRTC explains the growth of bundled services by the concentration of the communications services market within large entities vertically and horizontally integrated; five entities received collectively 83% of the entire industry's revenues in 2016 (Bell Canada, Québecor, Rogers, TELUS and Shaw).

⁸ **OECD**, *Bundled and Loyalty Discounts and Rebates. Policy Roundtable*, 2008, DAF/COMP(2008)29, p.13, online: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP\(2008\)29&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2008)29&docLanguage=En) (consulted on December 10, 2017).

As in this report, that group of services is often called “service bundle” (for different kinds of bundled services: TV, cell phone, residential phone and/or Internet) or “service package” (for packaged services of the same kind, such as packaged Internet services). We will write “bundle discount” or “package discount” when discounts apply to these types of offers.

⁹ **CRTC**, *Communications Monitoring Report 2017*, *op. cit.* note 1, pp.44-45.

between 2006 et 2016, prices for those services rose annually by 2 to 4.3%, depending on the service, during the same period¹⁰.

The vast majority of Canadian households subscribe to the four major communications services (wireless phones, residential phones, Internet access, and cable television¹¹. For those services, Canadian households spend several thousands of dollars annually, i.e. generally a significant part of their budget. According to the most recent statistics, Canadian households spend on average \$218.42 monthly for their communications services: \$87.25 for wireless services, \$54.50 for cable television, \$46.50 for Internet services, and \$30.17 for residential phone services¹².

Undeniably, communications services have become essential services¹³. So it's difficult for households to avoid that expenditure, which represents, proportionately, a much greater burden on low-income households. Thus, in 2015, telecommunications services cost Canadian households at the lowest income quintile (\$31,608 or lower) around 8.6% of their annual revenue, but only 3.9% at the third quintile and 1.7% at the fifth quintile¹⁴. Moreover, a 2015 study by the Canadian Public Advocacy Centre reported that those expenditures were the fourth-largest for the lowest quintile, after housing, transportation and food, but before clothing, health care and education¹⁵.

In this context, it's not surprising that Canadian households look for discounts in communications services, and that providers constantly advertise discounts to attract consumers.

¹⁰ *Ibid.*, p.51.

¹¹ in 2016, 86.1% of households were subscribed to a wireless service, 83% to broadband, 76.2% to a cable television service and 71.9% to a residential phone service: *Ibid.*, pp. 223, 279 and 195.

¹² *Ibid.*, p.42.

¹³ Fixed and mobile broadband Internet services and mobile fixed and wireless voice services constitute basic telecommunications services in the sense of paragraph 46.5(1) of the *Telecommunications Act* (the CRTC's universal service objective): **CRTC**, *Telecom Regulatory Policy CRTC 2016-496*.

¹⁴ **CRTC**, *Communications Monitoring Report 2017*, *op. cit.* note 1, p.48.

¹⁵ **PIAC**, *No Consumer Left Behind: A Canadian Affordability Framework for Communications Services in a Digital Age*, 2014, p.15, online: <http://www.piac.ca/wp-content/uploads/2015/03/PIAC-No-Consumer-Left-Behind-Final-Report-English.pdf> (consulted on February 15, 2018).

2. Promotional Information: A Major Source of Dissatisfaction for Canadian Consumers

A major European study reported in 2016 that the telecommunications market was the consumer sector where consumers encountered the most problems¹⁶. For the 42 markets studied, 10% on average of respondents said they had faced a problem, but that proportion increased to 20% for the wireless and Internet services markets. The markets of residential phone and cable television services were also above average: 14% and 16% of consumers, respectively, reported having encountered problems. In comparison, that proportion was only 15 % for the used car market, and 8% for the air travel market, even though consumers regularly complain about serious problems with those markets.

We find no similar study in Canada. However, there is no doubt that Canadian consumers also regularly experience problems with the communications services market. Troubling statistics from Canadian complaint-handing agencies, and the many class actions launched in recent years against providers of these types of services, confirm this¹⁷.

Our research was limited to precontractual information, which is offered by providers before conclusion of a contract. Precontractual representations can take multiple forms: certain providers' ads, promotional or informational documentation presented on their websites, or statements by their salespersons or customer service representatives.

The reports by consumer complaint monitoring and handling agencies in Canada provide an overview of the level of consumer discontent with the information received from their communications service provider before conclusion of a contract. We will describe the progression of those complaints and the main sources of disputes reported by consumers. We will also discuss the consequences that inadequate or misleading information can entail for consumers and the communications services market.

¹⁶ **EUROPEAN COMMISSION**, *Consumer Markets Scoreboard Making markets work for consumers*, 2016, pp.66-67, online: https://ec.europa.eu/info/sites/info/files/consumer_markets_scoreboard_2016_en.pdf (consulted on May 15, 2018). The phone survey's representative sample was constituted by 500 persons for each of the 42 sectors covered by the survey.

¹⁷ Among the class actions recently authorized against providers, see for example: *Abicidan v. Bell Canada*, 2017 QCCS 1198, *Frainetti v. Bell Canada*, 2017 QCCS 3081, *Bergeron v. Telus Communications Company*, 2017 QCCS 734 and *Montreal Independent Community Television (TVCI-MTL) v. Videotron*, 2018 QCCA 527.

2.1 Many Complaints Each Year

2.1.1 COMPLAINTS TO THE COMMISSION FOR COMPLAINTS FOR TELECOM-TELEVISION SERVICES

Year after year, the Commission for Complaints for Telecom-television Services (CCTS)¹⁸ deplores the high number of complaints about information disclosure to consumers by communications services providers and reminds the latter to make sure they communicate clearly and correctly to consumers all important information about their services, so that consumers can make better-informed purchasing decisions and be adequately informed of their rights and obligations¹⁹. In its 2016-2017 annual report, the agency urged “service providers in all lines of business – wireless, internet, phone and TV – to review their practices surrounding clear and accurate disclosure of information, both through their official policies and documents, and through the material available to their front-line employees²⁰.”

That recommendation appears as a *leitmotiv* in the agency’s reports, because in its ten years of existence, the agency has observed a substantial increase in problems raised by consumers about disclosure (or non-disclosure) of service terms.

While during 2011-2012, “non-disclosure of terms/misleading information about terms” represented 4.67% of all the problems raised before the agency²¹, that proportion rose to 10.9 % in 2016-2017²². The agency’s latest mid-year report, which covers the period from august 1, 2017 to January 31, 2018, reported a new substantial increase in problems raised in this regard, to almost 15% of all the problems reported by consumers during that period²³. While this was only the fifth-most frequently raised problem in complaints in 2012-2013, “non-disclosure of terms/misleading information about terms” was the most frequent problem raised in 2014-2015.

In 2016-2017, for the first time in three years, information disclosure problems were not most frequently raised before the CCTS, but the second one, behind “incorrect charge” problems²⁴. But that “improvement” in the ranking should not be interpreted as an actual victory for consumers; in fact, the number of disclosure problems raised by consumers to the CCTS again increased, from 1,891 in 2015-2016 to 2,016 in 2016-2017, i.e. an increase of 6.6%²⁵. In addition, those same problems have already been raised 1,891 times in the first six months of 2017-2018, for an increase of 138% compared to the same period in the previous year²⁶.

¹⁸ The Commission for Complaints for Telecommunications Services (CCTS) was formerly called the Commissioner for Complaints for Telecommunications Services.

¹⁹ CCTS, Annual Report 2008-2009, p.26.

²⁰ CCTS, *Let’s talk solutions*. Annual Report 2016-2017, p.26.

²¹ CCTS, *We listen. We help*. Annual Report 2011-2012, p.32.

²² CCTS, Annual Report 2016-2017, *op. cit.* note 20, p.18.

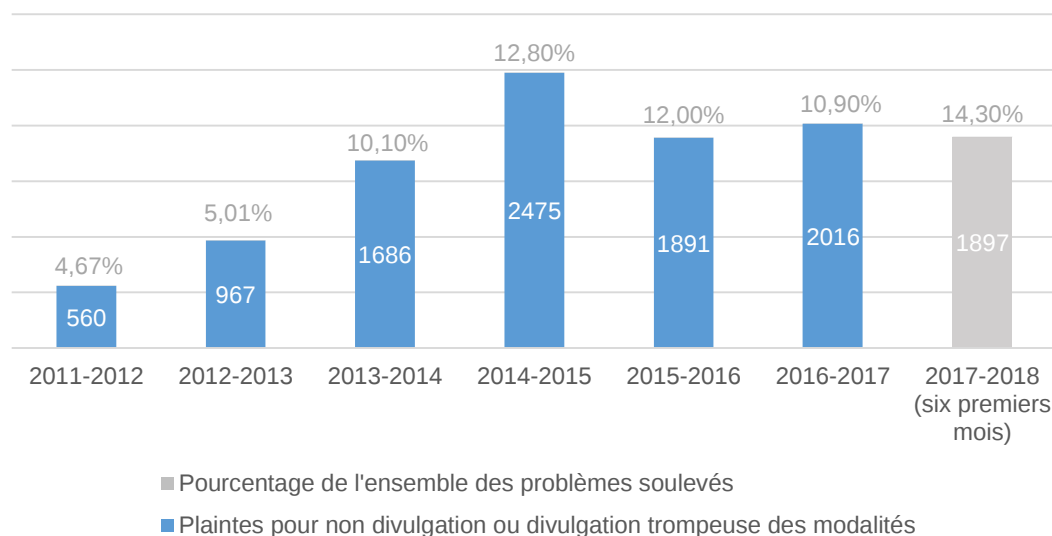
²³ *Ibid.*, p.3.

²⁴ *Ibid.*, p.18. A problem of “incorrect charges” reported by a consumer may also result from non-disclosure of or misleading information about those charges.

²⁵ *Ibid.*

²⁶ CCTS, *Let’s talk solutions*. Mid-year Report 2017-2018, p.3; CCTS, *Let’s talk solutions*. Mid-year Report 2016-2017, p.3.

Table 1
Complaints to the CCTS about
non-disclosure of terms/misleading information about terms



Sources: 2011 to 2017 annual reports and 2017-2018 mid-year report of the CCTS

More than 80% of information disclosure problems reported by consumers to the CCTS concerned wireless phone services and Internet access. Wireless phone services were targeted by over half of the complaints on this subject, which, according to Commissioner Howard Maker, can be explained by the complexity of information on those services²⁷.

The Commissioner seemed more surprised by the high proportion of disclosure problems with Internet access services, which has more than doubled in the last six years: “The amount of information customers need to be informed about internet service isn’t nearly as complicated as a wireless transaction. So it’s a concern that the number of complaints about it continues to increase ²⁸.”

We don’t understand the Commissioner’s explanation. We’re not convinced that information on wireless services (call minutes, messages, data, etc.) poses a greater challenge for consumers than Internet access services (download capacity, download and upload speeds, etc.). While the multiplicity of usage options and rate structures makes wireless services complex, the terms of Internet access services seem to us, but not to the

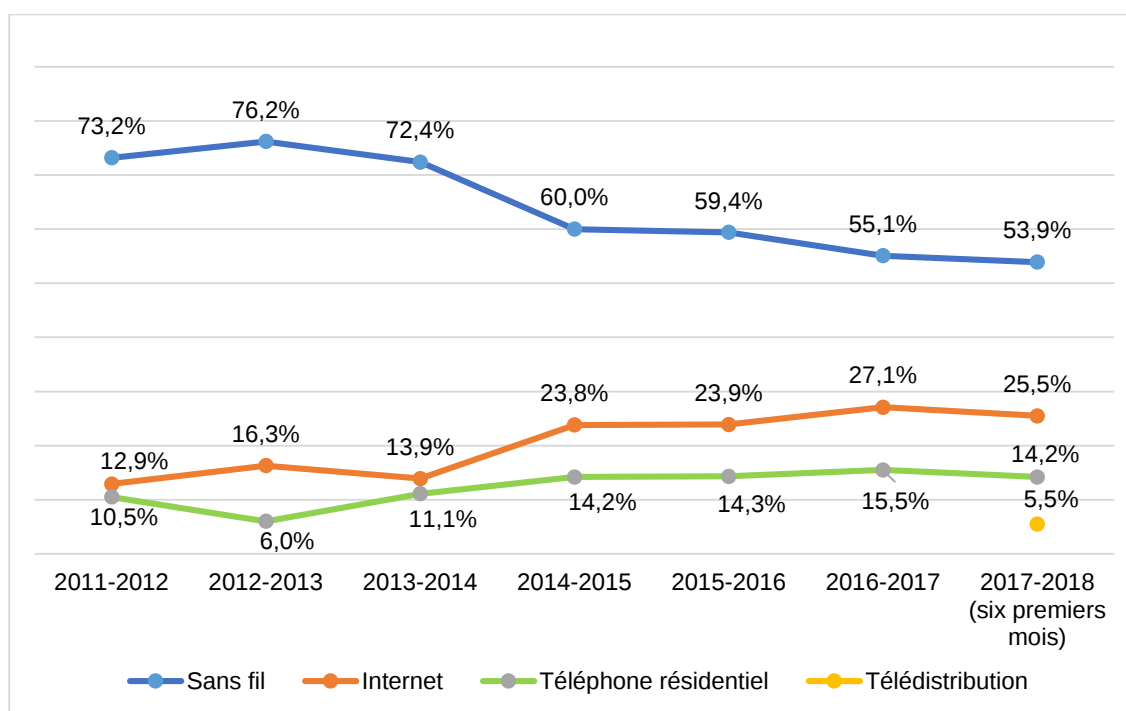
²⁷ “Non-disclosure complaints were predominantly about wireless services, likely due to “all the different twists and turns that customers have to make in navigating their wireless service and what they want to buy,” Maker said.”: **JACKSON**, Emily, *Canadians’ complaints about wireless, internet, telephone and TV services surge 73%, watchdog says*, Financial Post, April 10, 2018, online: <http://business.financialpost.com/telecom/canadians-complaints-about-wireless-internet-telephone-and-tv-services-surge-73-watchdog-says> (consulted on May 10, 2018).

²⁸ **JOHNSON**, Erica, *Consumer complaints about telecoms on the rise — wireless issues most common beef*, CBC Go public, November 28, 2017, online: <http://www.cbc.ca/news/business/telecom-consumer-complaints-up-1.4422206> (consulted on April 20, 2018).

Commissioner, just as problematic for consumers (for example, the difficulty in assessing their needs regarding download speed or capacity).

In any case, nothing indicates that the complexity of both services has increased in recent years to the point of justifying the substantial increase in the number of complaints, as indicated above.

Table 2
Breakdown by services of complaints to the CCTS about non-disclosure/misleading information



Sources: 2011 to 2017 annual reports and 2017-2018 mid-year report of the CCTS

The data provided by the CCTS for the period from 2007 to 2011 don't clearly identify the information problems examined by our research. The agency's annual reports for those periods more broadly discuss "contractual disputes," which reportedly represent almost one-third of complaints received. It is thus impossible to determine the percentage of complaints exclusively about information disclosure problems. However, a passage in the agency's 2008-2009 report suggests that the problem was already substantial at the time:

In 2008-2009, 27% of complaints filed with CCTS specifically involved a provision or issue in the provider's Terms. In a large number of these complaints, customers reported that they were not aware, nor had they been informed by their TSP [telecommunications services provider], of the existence of the Terms, and that

they were bound by them. Customers have expressed significant frustration at not being clearly informed of the applicable Terms [...]²⁹.

A PROBLEM DIFFICULT TO QUANTIFY

It should be noted that the 2,016 complaints recorded for 2016-2017 or the 1,897 complaints already recorded by the CCTS during the first six months of 2017-2018 likely reflect a very small proportion of consumers dissatisfied with information received before conclusion of a contract with their communications services provider. The available numbers should be studied while keeping in mind such aspects as the relatively young age of the federal agency and its low notoriety.

Indeed, a survey ordered by the CRTC in fall 2016 regarding consumer complaints about wireless services confirmed Canadian's lack of knowledge of the CCTS: of the 17% of respondents who had complained in the twelve months preceding the survey, 97% did so to their service provider, but only 2% subsequently to the CCTS³⁰. And yet, only one out of four complainants expressed satisfaction with his complaint's settlement³¹. Why did the dissatisfied complainants not then complain to the CCTS? Almost 70% of respondents said they were unaware of the agency's existence. Among respondents 18 to 34 years of age, that percentage rose to 84%³².

More broadly, many consumers never file complaints to anyone. For example, a study conducted in the retail market in 2006 reported that only 6% of dissatisfied consumers contacted the retailer after encountering a problem³³. They tended rather to discuss it with their entourage and to no longer do business with the retailer in question³⁴.

2.1.2 COMPLAINTS TO THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

On a few occasions, the CRTC itself realized the dissatisfaction of many Canadians with the information provided by communications services providers.

During a 2016 consultation on the development of the *Television Service Provider Code*, the CRTC received several comments from individuals about the complexity of agreements and promotional offers. Some of those individuals also criticized the confusion surrounding

²⁹ CCTS, *Annual Report 2008-2009*, op. cit. note 19, p.25.

³⁰ KANTAR TNS, *Wireless Code Public Opinion Research 2016*, produced for the CRTC, November 18, 2016, pp.34-35, online: <http://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/crtc/2016/027-16-e/report.pdf>

³¹ *Ibid.*, p.37.

³² *Ibid.*, p.35.

³³ WHARTON, University of Pennsylvania, *Beware of Dissatisfied Consumers: They Like to Blab*, March 2006, online: <http://knowledge.wharton.upenn.edu/article/beware-of-dissatisfied-consumers-they-like-to-blab/> (page consulted on April 20, 2018).

³⁴ The latter option may not be realistic in the current state of the telecommunications market, with its strong concentration of a few major players.

some promotions, which advertised charges and terms that did not correspond to those that ended up being applied³⁵.

Regarding wireless services, the CRTC has commissioned one survey annually since 2014 to identify the main problems facing consumers. The survey conducted in spring 2016 among almost 1,500 Canadians reported that “misleading information about the terms of contract” was invoked by almost one-fourth of consumers who had complained about wireless services³⁶.

2.1.3 COMPLAINTS TO ADVERTISING STANDARDS CANADA

The problem of misleading representations is obviously not exclusive to communications service providers. Advertising Standards Canada (ASC), the association that administers the advertising industry’s self-regulatory code, also observes an increase in Canadian consumers’ complaints about misleading representations from businesses or advertising agencies. Those complaints are not related exclusively to communications service providers, although their ads are occasionally examined by that agency.

In 2016, more than 60% of complaints received by the agency alleged misleading or inaccurate advertisements: omissions of relevant information, imprecise details of the offer, unsupported claims, etc.³⁷ Unsurprisingly, many complaints pertained to price advertising.

In its review of complaints received in 2016, the agency reported a profound change in Canadian consumers’ complaints about advertising. In the past, the main reason for complaints concerned advertisements that were in poor taste, offensive and/or abusive. In 2006, the agency thus received twice as many complaints about unacceptable representations than about the veracity or accuracy of ads. In 2016, by contrast, it received three times as many complaints about misleading or inaccurate ads than about unacceptable representations³⁸.

2.2 The Main Problems with Information Disclosure

2.2.1 PARTIAL PRICES

A particularly serious problem regarding advertising and promotional information concerns the practice known as “drip pricing” – announcing or displaying partial prices. That practice, denounced in 2015 by the Competition Bureau in its *Deceptive Marketing Practices Digest*, consists of displaying tempting prices for a good or service, which don’t end up

³⁵ CRTC, *Broadcasting Regulatory Policy CRTC 2016-1*, par. 8.

³⁶ KANTAR TNS, *Public Opinion Research*, op. cit. note 30, p.33.

³⁷ ADVERTISING STANDARDS CANADA, *Annual Ad Complaints Report. 2016 Year in Review*, pp.3-4, online:
<https://www.adstandards.com/en/ConsumerComplaints/2016adComplaintsReport.pdf> (consulted on April 20, 2018).

³⁸ *Ibid.*, p.5

representing the actual total cost the consumer will have to pay for it³⁹. Fees and other mandatory costs gradually added to the price initially advertised will be revealed in the course of the online purchasing or subscription process, or even later, when the first payments have to be made. That practice represented, according to the Bureau, a growing problem in the digital economy, where “additional costs are disclosed somewhere in fine print, often accessible only if consumers decide to scroll through many pages on the relatively small screen of their mobile devices⁴⁰.”

In recent years, two communications service providers have been fined by the Competition Bureau for advertising misleading prices.

In 2011, Bell agreed to pay a fine of \$10 million after the Bureau concluded it had promoted its services by making false or misleading representations about prices from December 2007 to June 2011⁴¹. It had simply been impossible for a consumer to obtain the service at the advertised price, due to mandatory fees added systematically to that price; those fees were disclosed (or hidden) to consumers only in terms written in fine print. For example, a package advertised for \$69.90 per month on Bell’s website actually cost at least \$80.27 once additional charges were applied⁴². In addition, a class action against Bell was authorized in June 2014 on the basis of those same facts⁴³.

In 2016, Comwave, a Toronto telecommunications service provider, also had to pay a fine – of \$300,000 – for ads deemed misleading by the Competition Bureau. Here again, it was impossible for a consumer to obtain the service at the advertised price because of the systematic addition of non-optional additional fees, of which the single disclosure in fine print was deemed insufficient by the Bureau⁴⁴. ASC’s Standards Council also blamed Comwave for misleading pricing in 2015⁴⁵. While the company advertised in several media a “free” residential phone service for the first six months of the contract, the subscriber still had to pay several mandatory additional charges for equipment and emergency services. According to the Standards Council, it was misleading to call the service “free” and mention those charges only in a note written in fine print and stating that charges had to be paid to obtain the service.

³⁹ **COMPETITION BUREAU**, *The Deceptive Marketing Practices Digest*, volume I, 2015, p.5, online: <http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/fra/03946.html> (consulted on April 20, 2018).

⁴⁰ *Ibid.*, p.5.

⁴¹ Agreement recorded in the case between *the Commissioner of Competition* and *Bell Canada, Bell Mobility Inc. and Bell ExpressVu LP*, TC-2011-005, July 7, 2011.

⁴² **COMPETITION BUREAU**, “Competition Bureau reaches agreement with Bell Canada requiring Bell to pay \$10 million for misleading advertising,” news release, June 28, 2011, online: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03388.html>

⁴³ *Charbonneau Daneau v Bell Canada*, 2014 QCCS 2667.

⁴⁴ Agreement recorded in the case between *the Commissioner of Competition* and *Comwave Networks Inc.*, CT-2016-014, September 13, 2016.

⁴⁵ **ADVERTISING STANDARDS**, complaint upheld - fourth quarter of 2015, Comwave Networks Inc., sec. 1(a) and (d).

2.2.2 ILLUSORY DISCOUNTS

A second source of recurrent frustration among consumers concerns the presentation, in communications service offers, of discounts with a duration and/or terms not clearly disclosed beforehand.

Disclosure of a discount's duration

Some very tempting discounts are presented without a clear indication of their duration, which may be short. In some cases, the discount's duration or the "promotional" nature of the advertised price is reportedly not disclosed⁴⁶. In other cases, it is reportedly not disclosed in a manner enabling consumers to be aware of it. Accordingly, in 2015, ASC blamed a telecommunications company (unidentified) for advertising that didn't clearly specify a discount's duration⁴⁷. While a price of "\$19.95*/month" was advertised in very large print, the liability exclusions, in fine print at the bottom of the ad, contained the following mention: "**\$19.95 in the first month only. \$49.95/month afterward."

Discount changes during the term of a contract

Another nasty surprise awaiting consumers concerns unexpected changes in the discount amount or the promotional price promised by communications service providers. This option that companies reserve for themselves to change prices or discounts is often found in contracts and in the fine print of promotional documents, but is rarely known to consumers, and the providers carefully avoid attracting their attention to that reservation.

In 2015, the CCST reported as an example the case of a customer whose monthly credit of \$8 (bundled discount or credit granted for bundled services) had suddenly been cut to \$6 after a few months. In response to his complaint, the provider stated that the service terms allowed it to change the promotional discount with a 30-day prior notice, in the case of a fixed-term contract. Since the provider had in fact sent that notice, the agency did not uphold the complaint and the file was closed⁴⁸. In the same year, the agency reported having received two hundred complaints related to bundled discounts⁴⁹.

⁴⁶ See for example a Rogers customer's allegations on the provider's forum: "Rogers service rep lied and said internet + basic cable package will be \$71, but neglected to inform that it was a promotional price for 3 months, and then price would double to \$160," comment by user dsdw34, May 8, 2015, online: <http://communityforums.rogers.com/t5/Account-Support/Customer-Service-Issue/td-p/306546> (consulted on January 10, 2018).

⁴⁷ **ADVERTISING STANDARDS**, complaint upheld - second quarter of 2015, Telecommunications Service Provider, sec. 1(d).

⁴⁸ **CCTS**, Annual Report 2014-2015 p.17.

⁴⁹ *Ibid.*

Disclosure of cash discount terms

Cash discount promotions – reimbursing a cash amount to the consumer after a purchase or a service subscription with the provider⁵⁰ – also give consumers a lot of headaches, because the complex terms are not always adequately disclosed.

The Office of Communication (Ofcom), a telecommunications regulatory agency in the United Kingdom, summarized in this way the problem that consumers encounter with this type of discount:

Independent retailers refusing to pay out on cashback offers on the basis that the consumer has failed to comply with the terms of the offer. In a number of cases it appeared that the terms and conditions attached to the cashback offer were unduly onerous and the consumer was misled about the difficulty in claiming⁵¹.

The problems related to cash discounts have not been discussed very much in Canada⁵². The CCTS nevertheless mentioned those problems in its case studies in 2013-2014⁵³.

2.2.3 IMPORTANT UNDISCLOSED TERMS

Another problem reported by various authorities pertains to the disclosure of important terms only in fine print, written in an obscure way; consumers don't generally learn those terms. This is one more misleading business practice denounced by the Competition Bureau in its 2015 digest⁵⁴.

An example of this problem with important information disclosure by providers concerns service coverage in some Canadian regions and its extra user fees. For instance, the CCTS reported having received complaints from numerous consumers in 2008-2009, regarding non-disclosure that certain regions are excluded from long-distance call plans⁵⁵. While the package had been presented to consumers as covering all of the country's long-distance calls, numerous consumers were still billed for long-distance calls to a particular region, which, since it's located in this country, they thought was included in the plan.

Moreover, the Advertising Standards Council blamed WIND Mobile in 2015 for an advertisement deemed misleading, that promoted a plan including "unlimited Canada/US-wide calling," whereas long-distance call charges were applicable beyond the areas

⁵⁰ **OFCOM**, *Protecting consumers from mis-selling of mobile telecommunications services*, 2009, p.4, par. 2.4, online: https://www.ofcom.org.uk/data/assets/pdf_file/0018/51390/statement.pdf (consulted on January 10, 2018).

⁵¹ *Ibid.*, p.4, par. 2.5.

⁵² In 2009, the Competition Bureau of Canada did produce guidelines for consumer discount offers, which it defines as follows: "Consumer rebate promotions include any type of promotion that involves a partial refund or discount from a manufacturer or retailer to consumers upon the purchase of a product. Refunds are normally paid in the form of cash or a cheque": **COMPETITION BUREAU**, *Consumer Rebate Promotions – Enforcement Guidelines*, 2009, online: [http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/Rebates-e.pdf/\\$file/Rebates-e.pdf](http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/vwapi/Rebates-e.pdf/$file/Rebates-e.pdf) (consulted on February 20, 2018).

⁵³ **CCTS**, Annual Report 2013-2014, p.13.

⁵⁴ **COMPETITION BUREAU**, *The Deceptive Marketing Practices Digest*, op. cit. note 39, p.5.

⁵⁵ **CCTS**, Report 2008-2009, op. cit. note 19, p.26.

covered by the WIND network, limited to the major urban centres of Canada and the United States⁵⁶.

The Advertising Standards Council twice accepted complaints against WIND, in 2012 and 2013, for not having adequately disclosed a promotional offer's terms. The offer in question was limited to the provider's new customers, which was not disclosed in the ads. According to the Council, "this was an important condition that should have been reasonably disclosed in all of the advertising for the promotion. Council found it was insufficient to state only in small print that 'conditions apply' ⁵⁷."

2.2.4 A FEW EXPRESSIONS CRITICIZED FOR THEIR USE

Providers' advertisements and promotional documentation have also been criticized for their common use of certain expressions that can prove misleading for consumers.

Some expressions that are not ambiguous in themselves are used by providers that attempt to change or limit their meaning within representations. For example, the mention "no contract required" is occasionally found in providers' advertisements, and was criticized by *Advertising Standards Canada* in 2010. A provider that had been the object of a complaint to the agency defended itself by pleading that the mention intended to tell the consumer that he had a right to cancel the service without penalty, following 30 days' prior notice. But whatever the name given by the provider, there is well and truly a contract when a provider commits to providing a service for payment and when the consumer commits to paying for that service⁵⁸. It was thus misleading to advertise the contrary, without explanation or nuance. As the agency stated:

*To ensure that advertising messages are not misleading, don't promise more than will be delivered. If, as in this case, the major benefit you want to communicate is that there are "no cancellation charges", why not say so? And if you attach terms and conditions to the purchase of or subscription to your goods or service, it is risky to advertise that there is "No Contract"*⁵⁹.

Service providers' nasty habit of pretending that their services are offered without a contract can have very harmful effects in the long run. On one hand, that claim confuses, in the minds of consumers, the very concept of a contract – an essential concept of law generally and of consumer law in particular. How can a consumer be explained that the contract constitutes the legal action between the parties and that he must consult it to know the parties' respective obligations, whereas his co-contractor tells him that no contract binds the parties? The CRTC created the *Wireless Code* to ensure that consumers "will be better

⁵⁶ **ADVERTISING STANDARDS**, complaint upheld – first quarter of 2015, WIND Mobile, sec. 1

⁵⁷ **ADVERTISING STANDARDS**, complaint upheld – second quarter of 2012, WIND Mobile advertiser, art. 1. See also Standards, complaint upheld – third quarter of 2013, WIND Mobile, art. 1

⁵⁸ In Quebec, that contract must be evidenced in writing, at the start of a communications service subscription, and the merchant is required to provide the subscriber with a copy of that contract: *Consumer Protection Act*, CQLR c. P-40.1, sec. 23(1), 214.2 and 27.

The CRTC Codes also impose a similar requirement on providers of certain services: *Wireless Code*, section B; *Television Service Provider Code*, section VII (for fixed-term contracts).

⁵⁹ **ADVERTISING STANDARDS**, *Advisory on the Meaning of the Phrase "No Contracts" in Advertising*, 2010, online: <http://www.normespub.com/en/Standards/2010Advisory.pdf> (consulted on March 10, 2018).

informed of their rights and obligations contained in their contracts with wireless service providers⁶⁰.” That objective is difficult to meet if businesses assure their subscribers that they don’t have a contract! On the other hand, consumer protection laws generally apply when a contract has been entered into between a consumer and a company. When a consumer is told that no contract exists, doesn’t he tend to believe that he has no recourse?

The qualifier “unlimited” applied to certain services was also cautioned about, on that occasion, by the Competition Bureau. The latter recalled in its digest of misleading business practices that advertising services as “unlimited” could be misleading under the *Competition Act* if, in fact, certain limits were applied that contradicted the general impression given by that qualifier. The Bureau emphasized that the common meaning of the word “unlimited” could not be clearer⁶¹. Following receipt of many consumer complaints on the subject, the CCTS also issued a caution, this time to consumers: “If you are attracted by the offer of an unlimited service plan, we urge you to be aware of the potential limitations. Ask the provider whether its unlimited plan is potentially limited, and try to determine how the provider implements its policy⁶².”

It should be pointed out that if that caution issued to consumers by the CTTS appears very conciliatory toward a provider practice that is challenged to that extent⁶³, it is because the CRTC, despite several interventions and pleas by the Competition Bureau, refused to prohibit providers from planning limits to services they call unlimited. Unfortunately, the CRTC’s decision is limited to requiring that providers give or make accessible to consumers, one way or another, information on applicable limits under the provider’s fair usage policy. According to the CRTC, “This will ensure that customers who subscribe to plans that are advertised as being “unlimited” understand the related parameters and that these consumers are not charged unexpected overage fees⁶⁴.” We doubt that.

Lastly, the use of certain prepositions has also been criticized because they can confuse consumers: the word “from” that precedes the announcement of a (minimum) price, or the expression “up to” that precedes the announcement of (maximum) download or upload speeds⁶⁵. Consumers are clearly not in a position from these indications to know with certainty the price they will be charged or the actual speed their service will reach.

⁶⁰ Preamble of the *Wireless Code*, *op cit.* note 58.

⁶¹ **COMPETITION BUREAU**, *The Deceptive Marketing Practices Digest*, volume 3, 2017, pp.15-16, online: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/DMPD-Volume3-Eng.pdf/\\$file/DMPD-Volume3-Eng.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/DMPD-Volume3-Eng.pdf/$file/DMPD-Volume3-Eng.pdf) (consulted on January 10, 2018).

⁶² **CCTS**, *We listen. We help.* Annual report 2011-2012, p.17.

⁶³ See in this regard: **UNION DES CONSOMMATEURS**, *Unlimited... Really? Are Consumers Adequately Protected?*, 2017, online: <http://uniondesconsommateurs.ca/docu/rapports2017/R20-limités-fortraits-illimités-E.pdf> (consulted on March 10, 2018).

⁶⁴ **CRTC**, Telecom Regulatory Policy CRTC 2013-271, par. 321

⁶⁵ See in this regard: **PIAC**, *Transparency in Broadband Advertising to Canadian Consumers*, 2013, online: https://www.piac.ca/wp-content/uploads/2014/11/piac_transparency_broadband_ads_final.pdf (consulted on January 10, 2018).

2.3 Consequences of Disclosure Problems

Problems with non-disclosure or misleading information regarding essential information make it difficult, if not impossible, for the consumer to make an informed decision about communications services. Situations will thus arise when the chosen service will not end up meeting a consumer's needs or expectations or corresponding with the financial limits he had set⁶⁶.

No Canadian study exists regarding the economic consequences of misunderstandings between consumers and communications service providers. But two studies have focused on that issue in the British market of wireless and Internet access services. While not conclusive regarding the Canadian situation, those studies do highlight the seriousness of the harm sustained by many consumers in the event of misleading prices or problematic price disclosures.

The British agency *Citizen Advice* published in July 2015 a study on discounts in the Internet services offers of the country's six main providers. In addition to the advertisement of discounts with an inadequately disclosed short duration, the agency emphasized the prevalence of numerous charges – rental, activation, delivery, etc. – that consumers didn't expect given the inadequate prior disclosure. The agency estimated that the presentation of discounts thus masked the service's actual long-term cost. According to the agency's calculations, when the regular price and all the charges are included, British consumers of Internet access services paid on average up to three times the price initially advertised⁶⁷. Some consumers reportedly paid up to 20 euros (CA\$30) more per month than the price that had tempted them initially⁶⁸.

The British regulatory agency Office of Communications (Ofcom) also studied in 2009 the harm sustained by consumers from providers fraudulently selling – “mis-selling” – wireless services⁶⁹. Notably included in the definition of “mis-selling” were: disseminating false and misleading information, omitting important aspects, and sale under pressure⁷⁰. The study reported that British consumers lost on average £119 (CA\$202) over the life of the contract⁷¹. That number, which the agency called very conservative, was especially low

⁶⁶ **OECD**, *Enhancing Competition in telecommunications: protection and empowering consumers*. Ministerial Background Report, 2008, DSTI/CP(2007)6/FINAL, p.10, online:

<https://www.oecd.org/sti/consumer/40679279.pdf> (consulted on January 10, 2018).

⁶⁷ **CITIZENS ADVICE**, *Broadband providers 'cashing in on false promises'*, July 2015, online:

<https://www.citizensadvice.org.uk/wales/about-us/how-citizens-advice-works/media/press-releases/broadband-providers-cashing-in-on-false-promises/> (page consulted on March 10, 2018)

⁶⁸ The difference is all the greater because Internet services are significantly less expensive in the United Kingdom than in Canada. For example, a package offering speeds of 41 to 100 Mbps cost CA\$58.38 on average in the U.K. versus CA\$82.53 in Canada in 2017: **NORDICITY**, *2017 Price Comparison of Telecommunications Services in Canada and Select Foreign Jurisdictions*, October 2017, p.53, online: [https://www1.ic.gc.ca/eic/site/693.nsf/vwapj/Nordicity2017EN.pdf/\\$file/Nordicity2017EN.pdf](https://www1.ic.gc.ca/eic/site/693.nsf/vwapj/Nordicity2017EN.pdf/$file/Nordicity2017EN.pdf) (consulted on March 10, 2018).

⁶⁹ **OFCOM**, *Protecting consumers from mis-selling of mobile telecommunications services*, op. cit. note 50, pp.34-36.

⁷⁰ *Ibid.*, par. 4.5.

⁷¹ *Ibid.*, par. 4.53, 4.56 and 4.46.

because it took into account the reimbursement that some consumers were entitled to following their undertakings or complaints.

Information disclosure problems experienced by consumers can also entail non-monetary consequences. For instance, consumers can feel frustration or stress due to a dispute with a provider, and can spend a lot of time settling a problem, by contacting the provider and/or filing a complaint with the appropriate agency. Ofcom's 2009 study mentioned as an example that British consumers of wireless services who were affected by a disclosure problem lost on average 30 minutes⁷².

Lastly, Ofcom also noted the inherent risk that disclosure problems would lessen consumer confidence in the communications services market and discourage them from "taking advantage" of the market and changing providers⁷³. The ultimate impact of that greater consumer passivity? The loss of advantages that should result from competition: "By making competition less effective, it may limit the benefits to customers as a whole that accrue from well-functioning markets ⁷⁴."

2.4 The Difficulty in Comparing Offers

An OECD report also reported the difficulties experienced by consumers in obtaining comparable information from different communications service providers, notably regarding the prices and quality of services offered⁷⁵. That difficulty results in part from the different wording used by providers, the multiplicity of possible terms and conditions, and the price structure specific to each provider or even to each package or bundle. It thus becomes very complicated for the consumer to identify all the relevant information in the available promotional documentation, since the latter will vary greatly – the information stated, the options included or available, the presentations – depending on the provider and the services chosen.

Information overload could cause a lot of confusion among consumers and lessen their ability to make informed decisions on the subject. An overwhelmed consumer can neither absorb new information nor, probably, adequately handle the information he has garnered.

For example, regarding wireless phone services, surveys conducted of consumers from a few OECD countries confirm the difficulty many of them have in comparing wireless phone plans, because of the complex rate structures and the various usage restrictions. "Per-minute charge," "peak/off-peak rates," "discounts on favourite numbers," "free trial," "hybrid prepaid tariffs": Those are just a few of the wireless services' possible price structures

⁷² *Ibid.*, par. 4.52.

⁷³ **OFCOM**, *Migrations, switching and misspelling. Consultation*, 2006, par. 3.13, online: https://www.ofcom.org.uk/_data/assets/pdf_file/0028/94582/migrations-switching-mis-selling.pdf (consulted on March 20, 2018).

⁷⁴ *Ibid.*

⁷⁵ **OECD**, *Enhancing Competition in telecommunications: protection and empowering consumers*, op. cit. note 66, p.11.

identified by the OECD⁷⁶, and consumers have to understand the services' features adequately to make a choice that meets their needs and expectations.

The OECD has also identified service bundle offers as an additional difficulty for a consumer trying to compare communications service offers. In addition to multiple possible combinations of services, features and terms, the OECD states that "prices are obscured because consumers do not always understand the relationship between the bundle price and a price for each component"⁷⁷."

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, p.29.

3. Summary of Provider Obligations

In the following paragraphs, we will briefly identify the obligations and prohibitions imposed on providers and related to their promotional offers, the precontractual information they give consumers, and all other representations they usually make to consumers before the conclusion of contracts.

We will make an overview of the general requirements that provincial consumer protection laws and the federal *Competition Act* impose on provider representations. We will also examine the very limited framework provided by the CRTC for providers' representations before the conclusion of certain communications services contracts.

3.1 General Obligations

3.1.1 PROVINCIAL CONSUMER PROTECTION LAWS

In Quebec, several provisions of the *Consumer Protection Act (CPA)* pertain to company representations intended for consumers. The *CPA* specifies that statements, behaviours and omissions constitute representations⁷⁸. In that sense, offers presented on provider websites certainly constitute representations as the *CPA* defines them.

The *CPA* provides several prohibitions to ensure that consumers will be sufficiently well informed before contracting⁷⁹ and that the provider will not attempt to mislead them. Section 210 thus prohibits the provider to make, in any manner whatsoever, a false or misleading representation to a consumer⁸⁰. Section 228 states that a business cannot omit a material fact in a representation made to a consumer⁸¹.

A representation will be deemed false or misleading according to the general impression it gives and, if applicable, to the literal meaning of its wording⁸². In the *Richard v Time Inc.* decision of 2002, the Supreme Court of Canada determined that the general impression to which the *CPA* refers is one given to a credulous and inexperienced consumer who is not particularly able to detect falsehoods or subtleties in a commercial representation⁸³. Adopting the viewpoint of the consumer in question, the Supreme Court stated that the general impression is the one given after first contact with an advertisement⁸⁴ or with written promotional documentation. That general impression will result from reading the “entire advertisement” – more than a rushed or partial reading, but less than going over every

⁷⁸ *Consumer Protection Act*, CQLR c P-40.1, sec. 216.

⁷⁹ *Union des consommateurs v Air Canada*, 2014 QCCA 523, par. 58.

⁸⁰ That very general provision is completed, in subsequent sections, by a set of prohibitions against more-specific misleading representations.

⁸¹ The *CPA* doesn't define the concept of “material fact.” However, the mentions that must be included in certain contracts suggest what is a material fact: see for example the *Consumer Protection Act*, *op. cit.* note 78, sec. 214.2. See also the explanations of the concept “material fact” in the *Competition Act*, sec. 3.1.2.

⁸² *Consumer Protection Act*, *op. cit.* note 78, sec. 218.

⁸³ *Richard v Time Inc.*, 2012 CSC 8, [2012] 1 RCS 265, par. 70 and 71.

⁸⁴ *Ibid.*, par. 57.

detail to understand all of the text's subtleties⁸⁵. The assessment will be based on the text itself, but also on its context and the way it is presented to the consumer⁸⁶. One example is the notes written in fine print at the bottom of the pages of many advertisements; should reading and understanding those notes be considered, in an assessment of the general impression given by an offer, as an integral part of reading the entire text, or as the result of attentive reading and a detailed analysis of a company's representations? Unfortunately, the Supreme Court has not provided a clear answer to that delicate question, which will therefore have to be answered on a case-by-case basis.

The *CPA* also provides specific rules for price advertising. Under section 224, a business is prohibited from requiring, by any means whatsoever, a higher price than advertised for a good or service⁸⁷. The Act specifies that the advertised price displayed must therefore include "the total amount the consumer must pay for the goods or services⁸⁸."

In Ontario, the *Consumer Protection Act, 2002* also prohibits making a false, misleading or deceptive representation, which it calls an unfair practice⁸⁹. The Act includes in the definition of a misleading representation: "using exaggeration, innuendo or ambiguity as to a material fact, or failing to state a material fact if such use or failure deceives or tends to deceive⁹⁰." The criterion for determining the misleading nature of a representation or omission is similar to the one described above in Quebec's *CPA*.

It should be noted that most of the other Canadian provinces have similar or equivalent provisions.

3.1.2 COMPETITION ACT

The *Competition Act*, a federal law governing the practices of companies in Canada, prohibits giving the public, in any manner whatsoever, false or misleading information on an important point⁹¹. Information on an important point is likely to induce consumers to adopt behaviour that, on the basis of that information, seems advantageous to him⁹², such as the choice of subscribing to a communications service rather than a competitor's, for example. Also included in the prohibition against false or misleading representations is the

⁸⁵ *Ibid.*, par. 56.

⁸⁶ *Ibid.*, par. 55.

⁸⁷ *Consumer Protection Act*, *op. cit.* note 78, sec. 224(1)c).

⁸⁸ *Ibid.*, sec. 224(2). However, a merchant is not required to include in the advertised price the Quebec sales tax, the goods and services tax of Canada and the other fees under a federal or provincial law "where, under that Act, the duties must be charged directly to the consumer to be remitted to a public authority." *Regulation respecting the application of the Consumer Protection Act*, RSQ, 1981, c P-40.1, r.3, sec. 91.8(1). For example, residential or wireless phone service providers in Quebec are required to charge 9-1-1 service fees on behalf of Revenue Québec (*Regulation governing the municipal tax for 9-1-1*, CQLR c F-2.1, r 14 adopted under the *Act respecting municipal taxation*, CQLR c F-2.1, sec. 244.68 and 262(13). Providers are therefore not required to include that amount in the advertised service's price.

⁸⁹ *Consumer Protection Act, 2002*, S.O. 2002, chap. 30, Schedule A, sec. 14(1).

⁹⁰ *Ibid.*, sec. 14(2)14).

⁹¹ *Competition Act*, RSC 1985, ch. C-34, sec. 52(1) and 74.01(1)a).

⁹² **COMPETITION BUREAU**, *Enforcement Guidelines - Application of the Competition Act to Representations on the Internet*, 2009, p.2, online: http://publications.gc.ca/collections/collection_2010/ic/lu54-1-2009-eng.pdf (consulted on December 10, 2017); *Apotex Inc. v Hoffman La-Roche Limited*, 2000 CanLII 16984 (ON CA), par. 16.

failure to provide information that would be relevant to that decision⁹³. The analysis of the false or misleading nature of representations will, again, be based on the general impressions they give⁹⁴.

As mentioned above, adequate disclosure of the price and mandatory fees is a subject of discord in the communications services market. In that regard, the Competition Bureau's website gives an example of "hidden or additional charges" not disclosed to the consumer, to illustrate what would constitute a false or misleading representation under the *Competition Act*. Since any representation about a good or service must contain all the information enabling the purchaser to make an informed decision, the Bureau recalls that "If any representation is made concerning the price of a product, any such additional required payment should be disclosed at the same time⁹⁵."

Guidelines of the Competition Act - Application of the Competition Act to Representations on the Internet

Regarding the promotional documentation of providers and the general impression it gives, we must mention the importance of disclaimers. Those notes in fine print, most often found at the bottom of advertisements, are used to add information or clarifications to the main representations written in the body of a text⁹⁶.

Due to the prevalence of those notes, disclaimers and restrictions in offers and promotions made on the Web, the Competition Bureau of Canada issued guidelines in 2003 that can be useful in determining whether such notes should be taken into account when assessing the general impression likely given by an online advertisement.

As for the content of those notes, the Bureau explains that a disclaimer should never be used for rectifying a main representation that is false or misleading, but rather for clarifying or completing certain statements⁹⁷.

Moreover, if a disclaimer aims at preventing the general impression of certain statements from being false or misleading, it remains that the consumer must be able to take notice of that disclaimer. The Bureau sets forth certain principles regarding the visibility and accessibility of disclaimers, in order to guide merchants who want to avoid giving a false impression⁹⁸. Notably:

- the disclaimer should appear on the same screen and close to the representation to which it relates;

⁹³ *Ibid.*, p.3.

⁹⁴ *Competition Act*, *op. cit.* note 91, sec. 52(4) and 74.03(5).

⁹⁵ **COMPETITION BUREAU**, *False or misleading representations*, online:

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/00513.html> (page consulted on April 20, 2018).

Section 2 of the Act specifies that services are included in the products (2(1) **product** Product includes an article and a service).

⁹⁶ **COMPETITION BUREAU**, *Enforcement Guidelines*, *op. cit.* note 92, p.9

⁹⁷ *Ibid.*, p.9.

⁹⁸ *Ibid.*, pp.4, 5, 9-10.

- Businesses should design their pages so as to alert consumers to the existence of the disclaimer and, by use of visual cues or otherwise;
- A text prompt indicating a disclaimer should be explicit rather than vague and should convey the nature and importance of the information. The Bureau distinguishes between a precise indication such as “see below for restrictions on eligibility,” which would better alert the consumer, and a very general indication such as “see below for details,” which would be insufficient;
- Disclaimers should not be hidden or buried, as when information is displayed in a colour that blends in with the background;
- Businesses should not assume that consumers read an entire Web site.

3.2 Obligations Specific to Certain Communications

In effect since September 1, 2017, the *Television Service Provider Code* established by the CRTC provides rules for the promotional offers of cable television service providers.

Every offer must be explained clearly to the consumer, both in phone calls and in the provider’s advertising materials⁹⁹. Explanations must be given regarding the offer’s duration and any other obligation related to the offer’s acceptance (for example, early termination fees)¹⁰⁰. Moreover, in the case of an offer including a limited-time discount or any other incentive measure, the service price at the end of any limited-time discount or incentive measure must be clearly indicated¹⁰¹.

The CRTC has also established a *Wireless Code*, in effect since December 2, 2013¹⁰². But that Code doesn’t cover the precontractual information of wireless providers. Rather, it applies from the date of conclusion of a contract. For example, the “clear, timely, and exact” information requirement imposed on the provider is restricted to the latter’s communications with its customers¹⁰³, and not with any consumer.

In fact, generally, the Codes developed by the CRTC provide almost exclusively protection measures that apply only to a contractual relationship between providers and their customers. Regarding the information disclosure requirement, we find for example that the provider must provide or offer to the customer a contract and a summary of the latter’s essential elements¹⁰⁴.

The summary of essential information is a document of at most two pages, written in plain language and summarizing the contract’s most important elements for the customer.

⁹⁹ **CRTC**, *Television service Provider Code*, Broadcasting Regulatory Policy CRTC 2016-1, sec. II(1).

¹⁰⁰ *Ibid.*, sec. II(2)a) and c).

¹⁰¹ *Ibid.*, sec. II(2)b).

¹⁰² **CRTC**, *Wireless Code*, Telecom Regulatory Policy CRTC 2013-271.

¹⁰³ In the meaning of the Code, customers are individuals or small businesses subscribing to wireless services: *Ibid.*, Part A(1)i).

¹⁰⁴ Wireless phone service providers are required to provide a copy in the case of a postpaid service contract: *Ibid.*, section C(1). In broadcast distribution, providers are required to offer to provide a copy in the case of a fixed-term contract: **CRTC**, *Television Service Provider Code*, *op. cit.* note 99, section XI(1) and VII(1).

According to the CRTC, that document greatly helps consumers to quickly understand their contract's basic aspects, whereas communications services contracts regularly sow confusion among consumers¹⁰⁵. Despite the acknowledged usefulness of such a document for the consumer's understanding, the provider has no obligation to provide it until a contract is actually entered into, and thus after the consumer has made his choice, notably based on the available promotional information. And yet, we think it equally important that consumers quickly understand the basic aspects of their contract... before signing it.

3.3 Specific Rules for Distance Contracts

Beyond general rules for merchants' representations, certain provincial consumer protection laws also include rules for disclosure prior to the conclusion of distance contracts¹⁰⁶. Those rules are of interest in themselves, because several if not all communications service providers invite consumers to subscribe by phone or even by filling out an online form, to spare them the need to go to the store.

Specifically regarding e-business (online business), and thus the possibility of subscribing directly on the website of certain providers, the legislative framework of most Canadian provinces is quite similar, due to a Canada-wide harmonization model. A study conducted by Union des consommateurs in 2014 on the regulation of distance contracts reported the following elements – identified as common to provincial laws – that must be disclosed precontractually by the online merchant:

- Description of the goods/services sold, including all technical requirements/specifications;
- Itemized list of the prices, including any associated costs (shipping charges and taxes);
- Any additional charges that may apply to the price of the product, or a description of these charges if they cannot be determined by the supplier;
- Total amount of the contract or amount of the periodic payments;
- Any restrictions/conditions/limitations that may apply to the purchase¹⁰⁷.

It should be noted that the above elements must also be disclosed prior to the conclusion of the contract by phone, in Quebec and other provinces that have not limited the scope of their regulation of distance contracts to those concluded online¹⁰⁸.

¹⁰⁵ **CRTC**, 2013-271, *op. cit.* note 102, par. 67 and 69; **CRTC**, *Broadcasting Regulatory Policy*, CRTC 2016-1, par. 52.

¹⁰⁶ The CPA defines a contract distance as "a contract entered into without the merchant and the consumer being in one another's presence and preceded by an offer by the merchant to enter into such a contract": *Consumer Protection Act*, *op. cit.* note 78, sec. 54.1

¹⁰⁷ **UNION DES CONSOMMATEURS**, *Regulating Distance Contracts: Time to Take Stock*, 2014, p.26, online: <http://uniondesconsommateurs.ca/docu/rapports2014/04-Contrats-a-distance-Eng.pdf> (consulted on May 5, 2018).

¹⁰⁸ See for example: *Consumer Protection Act*, *op. cit.* note 78, sec. 54.4; *O. Reg. 17/05: General; Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, sec. 35.2

3.4 Recourses against a Defaulting Provider in the Absence of a Contract

As we have seen, several laws and regulations prohibit misleading representations or impose specific obligations for disclosing precontractual information. Those frameworks are generally worded in broad language, presumably to cover a variety of situations and practices that could mislead consumers. We will discuss below the applicability of those frameworks to the promotional documentation of communications service providers.

However, a problem arises from the start regarding consumer recourses in the absence of a contract. While the prohibition of misleading representations is not limited to those leading to the conclusion of a contract, certain procedural rules limit that prohibition's scope in practice. If a consumer has not entered into a contract, it will prove extremely difficult, if not impossible, for him to obtain remedies against a provider that has made misleading representations, even when the law has actually been contravened.

First, a consumer who wants to complain against a cable television provider that has not met the CRTC Code's requirements cannot approach the CCTS unless he has concluded a contract with the provider. The CCTS is authorized to receive complaints related to the CRTC Code only if they are filed by a customer¹⁰⁹, i.e., within the meaning of the agency's procedural Code, by an individual or a small business "that has received, or has contracted to receive" telecommunications or television services from a provider¹¹⁰. Although its mandate is to administer the CRTC's Codes, the CCTS cannot handle a consumer complaint for infringement of those Codes in the absence of a contract.

Consumer recourses under Quebec's *Consumer Protection Act* are also reserved for those who have concluded a contract with a provider in default¹¹¹. If a merchant defaults on an obligation under the Act, the consumer who has entered into a contract can demand remedies such as: performance of the merchant's obligation, reduction of the consumer's obligations, termination of the contract, or annulment of the contract¹¹². In the absence of a contract, the consumer will therefore have no recourse under the CPA against a merchant who has made false or incomplete claims.

Ontario's *Consumer Protection Act, 2002* contains a similar provision, which grants the right to terminate an agreement entered into by a consumer after a merchant has engaged in an unfair practice¹¹³.

The *Competition Act* also grants a remedy to a consumer victimized by false representations. But he may have a lot of difficulty exercising that recourse in the absence of a contract. The Act grants an individual remedy against a natural or artificial person who has made false or misleading representations, but that remedy is limited to recovering an amount equal to that of the loss or damages sustained by the plaintiff. It should be noted

¹⁰⁹ CCTS, *CCTS Procedural Code*, sec. 3.1

¹¹⁰ *Ibid.*, sec. 1.1(a)

¹¹¹ *Consumer Protection Act*, *op. cit.* note 78, sec. 2: "This Act applies to every contract for goods or services entered into between a consumer and a merchant in the course of his business."

¹¹² *Ibid.*, sec. 272(1)a) to f). The CPA also assumes that a consumer would not have contracted had he known that a merchant was omitting a material fact during a representation to the consumer. Once again, this rule of evidence is of no help to consumers without a contract: *Ibid.*, sec. 253 and 228.

¹¹³ *Consumer Protection Act, 2002*, *op. cit.* note 89, sec. 18(1).

that the *Competition Act*, as opposed to the *CPA*, doesn't even allow the possibility of ordering the payment of punitive damages¹¹⁴.

3.5 Recourses Exercised by Competent Authorities

Given that in the absence of a contract, a consumer will have difficulty bringing legal proceedings against a provider alleged to have made false representations, those proceedings should be brought by the authorities charged with exercising specific recourses that don't depend on the existence of a contract¹¹⁵.

Accordingly, the *CPA* and Ontario's *2002 Act* allow the possibility for the respective province's Attorney General to bring criminal charges against a merchant who has contravened the law¹¹⁶. Because those are criminal proceedings, proof of the infraction must be beyond reasonable doubt. A natural person will be subject to a fine of \$600 to \$15,000 in Quebec¹¹⁷ or to a maximum fine of \$50,000 in Ontario. For an artificial person, the fine will be \$2,000 to \$100,000 in Quebec or a maximum of \$250,000 in Ontario¹¹⁸.

Those laws also allow certain measures that can be taken by the agencies responsible for applying the laws and terminating infractions. In Ontario, the law allows the Department's consumer protection director to order that a merchant making or having made misleading representations in an advertisement, circular, brochure or other published document cease and/or retract and publish the necessary correction¹¹⁹. In Quebec, the Office de la protection du consommateur's president must request a court injunction ordering a merchant to stop engaging in a prohibited business practice¹²⁰.

For its part, the *Competition Act* provides two possible remedies for cases of false or misleading representations¹²¹. Following an investigation by the Competition Bureau, the commissioner will decide whether a case should be forwarded to the Competition Tribunal (criminal proceeding). The specific proceeding, level of proof required and possible sanctions will vary according to that decision.

¹¹⁴ *Competition Act*, op. cit. note 91, sec. 36; *Consumer Protection Act*, op. cit. note 78, sec. 272(2).

¹¹⁵ Section 217 of the *Consumer Protection Act*, op. cit. note 78, states it specifically: "The fact that a prohibited practice has been used is not subordinate to whether or not a contract has been made."

¹¹⁶ *Ibid.*, sec. 277(a); *Consumer Protection Act, 2002*, op. cit. note 89, sec. 116(1)b)ii) (offences against provisions regarding unfair practices).

¹¹⁷ In cases of repeat offences, the *CPA* provides that an offender is subject to a fine with a minimum and maximum twice as high as for a first offence: *Consumer Protection Act*, op. cit. note 78, sec. 278(2).

¹¹⁸ *Ibid.*, sec. 278(1)a) and b); *Consumer Protection Act, 2002*, op. cit. note 89, sec. 116(5).

¹¹⁹ *Consumer Protection Act, 2002*, op. cit. note 89, sec. 109.

¹²⁰ *Consumer Protection Act*, op. cit. note 78, sec. 316(a).

¹²¹ *Competition Act*, op. cit. note 91, sec. 52 and 74.01(1)a).

4. Field Survey

4.1 Methodological Summary

After analysing the problems facing consumers regarding precontractual information provided by communications service providers, we conducted a field survey to verify how the providers applied the current legal framework.

Due to the scope and variety of each provider's offers, we limited our survey to promotional offers with discounts. We also chose to limit our survey to provider offers presented to Quebec and Ontario consumers; three-quarters of consumer complaints to the CCTS are made in those two provinces, the most populous in the country. That proportion is higher than that of their relative demographic weight¹²².

We selected eight providers that, with one exception¹²³, offered their services in Quebec and Ontario: four major providers (with infrastructures) and four independent ones¹²⁴. We thus hoped to have access to a wide range of offers and verify if the disclosure practices were the same depending on the type of provider. The providers chosen were: Bell, Rogers, Telus and Videotron among major providers, and Primus, Ebox, Distributel and Teksavvy among independent providers.

In January and February 2018, we collected information on the promotional offers (with and without bundled discounts) in the online documentation of all the providers chosen. We focused on promotional documentation regarding several types of communications services: Internet access service, mobile wireless and residential services, and cable television services. The grid we used for collecting and analysing the information was produced in the light of frameworks mentioned in the previous chapter.

4.1.1 METHODOLOGICAL LIMITATIONS

First, certain limits of the field survey were beyond our control. We studied the providers' promotional offers that were available during the data collection; three of the providers chosen did not offer bundled services in Quebec and/or in Ontario (Teksavvy, Rogers and Telus). Moreover, the offers analysed were those in effect at the time of our survey; those offers' number, importance and scope, as well as their presentation, are subject to change at any time by the providers.

Regarding wireless services, we were surprised that discounts generally pertained to the phones sold and not to the services themselves.

¹²² In 2016, 46.2% of complaints received by the CCTS originated from Ontario, which has only 38.5% of the Canadian population. Complaints from Quebec represented 27.5% of all complaints, whereas the province only has 22.9% of the Canadian population: **CCTS, *Let's talk solutions***. Annual Report 2016-2017, p.47.

¹²³ Videotron is the exception. The company services only Quebec, but we still chose to examine its offers, given its preponderant market share in the province.

¹²⁴ Those providers were selected according to their market share, their type, and the number of complaints they generated to the CCTS.

It should be kept in mind that this analysis is performed by a consumer rights group. While the data are objective, our findings and conclusions are not necessarily those that the competent regulatory authorities would reach. So although we can comment on the general compliance of the market or of certain providers and make recommendations, those authorities will be responsible for determining how to handle the problems we raise and how to interpret the applicable laws.

Additionally, this survey is not intended to put any provider on trial. It simply aims at drawing a portrait of current practices regarding disclosure of essential information in promotional documentation. This is why we chose not to identify the sources of screen captures from the providers' websites.

Rather than denouncing this or that provider, we attempt to develop, where necessary, relevant recommendations that should apply subsequently to the entire industry, in order to correct the problematic situations or practices identified.

4.2 Highlights

4.2.1 PRESENTATION OF PROMOTIONS

The discount amounts offered on the market at the time of our survey were impressive. The four main providers surveyed offered average discounts of \$20 to \$30 per month on their regular prices, and at times much more. For example, Bell advertised in Ontario a "TV + Internet" bundle that reduced the regular price by \$66/month for 12 months. Likewise with Rogers, which reduced the "Ignite Gigabit" package's price by \$73/month for 12 months in Ontario. Among independent providers, which often offered significantly lower regular prices¹²⁵, the discounts offered were generally around \$10 per month. In both cases, the discounts offered were on average equivalent to a reduction of around 25% of the regular price.

In addition to the monthly amount of savings, some providers highlighted, when reducing the price for a limited time, the total amount of savings obtained by the consumer during that period. For example, Videotron's offers systematically included a text box titled "VIDEOTRON SAVINGS" that mentioned the total "discounted" amount, which could reach hundreds of dollars.

Given the tempting savings offered, it seems all the more important to ensure that the promotions' terms are disclosed adequately to consumers before conclusion of a contract. Information clarity and accuracy must take precedence over seduction attempts, so that consumers are able to make truly informed choices.

¹²⁵ For example, the differences observed between the Internet service prices of incumbent companies and resellers varied between -17.91% and -34.33% in favour of resellers, depending on the service level (speeds, monthly data usage, etc.): **NORDICITY**, *2017 Price Comparison Study of Telecommunications Services in Canada and Select Foreign Jurisdictions*, op. cit. note 68, p.48.

Limited-time discounts

Very few of the offers studied applied to fixed-term contracts. Only two of the eight providers offered such contracts (of 12 to 24 months). However, the promotional prices generally had a fixed term, under contracts that rarely did. Five of the eight providers studied offered discounts lasting three to twelve months with open-ended contracts.

We noticed major differences between providers regarding disclosure of discount durations.

Two providers presented that information clearly and very visibly. In one case, directly above the announcement of a package's price, a text box in colour indicated that savings of \$x/month on the current price applied during the 12 first months of the contract.

Among two other providers, that information on the limited duration of the announced price was available in the offer's explanations rather than directly beside the price announcement.

We could thus read in one offer, reproduced in table 3, the mention "Promotion – R-Câble 75/10 illimité à 32,95 \$: le prix promotionnel s'applique les 12 premiers mois de l'entente seulement." That clarification was at the very bottom of the first opened tab, after explanations of the package's advantages, features and overage fees, and in a smaller font than the preceding mentions. Moreover, near the advertised price, there was no indication or notice that supplementary details were located elsewhere. A consumer who would quickly peruse the offer could assuredly miss that essential mention.

The discounts' duration was less obvious in another provider's offers: no indication near the promotional price announced; no indication in the explanatory tabs "Presentation" or "One-time fee." The only indication – so-called – of the promotional price's limited duration consisted of the mention "Total savings of \$180 for 12 months" in a text box titled "VIDEOTRON SAVINGS" below the package's title. Is that sufficiently clear to indicate that the promotional price will end after those twelve months of savings? Absolutely Not! To obtain the information, a consumer will ultimately have to consult the offer's footnotes, visible only if he expands the text by clicking on the mention "Certain conditions apply." Then he can read "this offer (...) consists of granting a promotional discount of \$15/month for 12 months." That sentence, although essential to understanding the price applicable during the contract term, could certainly have been integrated with the text box titled VIDEOTRON SAVINGS, quickly visible to the consumer...

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[RETOUR AUX FORAITS](#)

VOTRE DÉBIT

↓
75 MBIT/S
TÉLÉCHARGEMENT

↑
10 MBIT/S
ENVOI

6 UTILISATEURS
RECOMMANDÉS

CHOISISSEZ VOTRE CAPACITÉ

350 GO

ILLIMITÉ

Presentation

Détails du prix

Prix de groupe

RÉSEAU PROPULSÉ PAR LA FIBRE OPTIQUE

Un réseau hybride Puissance & fiabilité

CAPACITÉ : 350 GB / ILLIMITÉE

Avantages :

- Technologie Câble
- Tout nouveau, et très très vite
- Idéal pour plus de vitesse et de capacité
- Plusieurs utilisateurs à la fois

Caractéristiques :

- Vitesse jusqu'à 75 Mbps en aval
- Vitesse jusqu'à 10 Mbps en amont
- Même tarification sans ligne téléphonique

Le prix de l'utilisation excédentaire des forfaits extrême sera vendu au coût de 0.50\$/GB, et ce, avec un plafond maximum de 50.00\$.

Promotion – R-Câble 75/10 illimité à 32.95 \$: le prix promotionnel s'applique les 12 premiers mois de l'entente seulement.

Les chefs de file de l'industrie savent très bien qu'EBOX offre une expérience Internet de qualité..

32,95\$ /MOIS

COMMANDER

CONTACTEZ-NOUS

Par téléphone
1-844-323-EBOX (3269)

PARLER À UN CONSEILLER MAINTENANT

Unsurprisingly, the majority of providers offering limited-time discounts presented that promotional price prominently. The regular price was relegated to the background, generally near the promotional price's announcement, but in smaller and at times even strikethrough characters, making it difficult to read. Two providers stand out by their way of presenting regular prices.

One of those two providers simply didn't disclose the package's regular price, despite a mention that the announced promotional price would no longer apply after 12 months. We had to complete the three first steps related to the provider's subscription form before finally obtaining an indication of the package's regular price.

The other provider stands out by the importance it gives a package's regular price despite the existence of a few months' discount. The promotional price is thus indicated in finer print below the regular price, and not the other way around. Still, the promotional price's short duration (three months) may explain that choice. In any case, we think that although the offer may be less attractive for a less attentive consumer, it has the merit of being transparent and not posing any risk of sticker shock.

Table 4

Excerpt from a page describing bundles available on a provider's website

Offre-Valeur Internet 16 Et Téléphonie Résidentielle Numérique Utilisation Illimitée	Entente D'un An 69,95\$/mois¹ 60,00 \$ par mois par pendant les trois premiers mois Commande	Entente De 2 Ans 54,95\$/mois¹ Garanti avec une entente de 2 ans 45,00 \$ par mois par pendant les Commande
Offre-Valeur Internet 16 Et Téléphonie Résidentielle Numérique 200 Go/Mois⁵	Entente D'un An 59,95\$/mois¹ Commande	Entente De 2 Ans 48,95\$/mois¹ Commande

It should be noted that the discussion groups featured surprising comments about this last offer. Several participants seemed so brainwashed by industry practices that they almost reproached the provider for that exemplary practice because it contravened elementary marketing practices.

The discount is guaranteed but not the price

As mentioned above, several providers attached great importance, in their offers, to the difference between regular and promotional prices, and explicitly indicated the total monthly and/or annual savings that could benefit subscribers. Promoting those savings doesn't stop there. Several providers advertised discount "guarantees," in words like "guaranteed

savings of \$x per month.” The offers of three major providers – Rogers, Belle and Videotron – used such wording.

It’s important to understand that with this type of offer, if the service’s price increases, the advertised discount would then apply to the new price. The advertised (and guaranteed) price difference would thus be maintained. A provider’s sales representative confirmed it to us¹²⁶. That practice was discussed in several newspaper articles during the latest wave of providers’ rate hikes, in winter 2018¹²⁷.

The scheme of guaranteeing a discount amount rather than a reduced price is clever, with providers reserving the right to raise their revenues despite the guarantee given to the subscriber. And there is enormous risk that a consumer will not notice the trick and will believe that the reduced price is guaranteed. Does the announcement (in large characters) of a price and a monthly discount, along with the words “guaranteed savings...,” enable consumers to understand that the price in question can change at any time¹²⁸? We seriously doubt it. We think rather that those offers give consumers a false sense of security. A good price and a mention of “guarantee”: That’s what the consumer will notice.

To change that impression, the providers should provide real explanations, prominently displayed in the offers. This was not the case in the offers we studied. Despite the prevalence of asterisks after that mention of a guarantee, no understandable explanation was given.

In practice, only one provider offered a few sentences on the subject... and only in footnotes difficult to read (offer reproduced in Table 5). We could read the following two sentences:

“Cette offre [...] consiste à accorder un rabais promotionnel de 15 \$/mois pendant 12 mois”

“Le rabais promotionnel de 15 \$/mois est garanti pour une période de 12 mois avec ce forfait”

Those “explanations” do nothing to clarify the situation. A reader who doesn’t grasp the subtlety will view them as redundant, while the reduced price is displayed much more prominently.

¹²⁶ Statement of a Videotron customer service representative: “Yes, we can guarantee the discount amount of \$40 per month for 12 months, but if there is a rate increase, it would be applied.”

¹²⁷ See for example **ROSEMAN**, Ellen, *Why your Rogers’ Internet fees can go up even though you’ve signed a contract*, Toronto Star, April 9, 2018, online:

https://www.thestar.com/business/personal_finance/2018/04/09/why-your-rogers-internet-fees-can-go-up-even-though-youve-signed-a-contract.html (page consulted on April 20, 2018); **O’ROURKE**, Patrick, *Rogers increasing all internet packages above 20Mbps by \$8*, Mobilesyryp, February 6, 2018, online: <https://mobilesyryp.com/2018/02/06/rogers-20mbps-above-internet-increase-8-below-4/> (page consulted on March 15, 2018): “Those who have a guaranteed monthly promotional rate are also protected from the price increase, but only until their promotional period ends. Customers with offers or bundles that guarantee a certain reduction of the monthly rate will still receive their discount, but it will be reduced from the increased rate.”

¹²⁸ Subject to a notice being sent in accordance with the *Consumer Protection Act*, *op. cit.* note 78, sec. 11.2(1b).

Table 5

Excerpts from the descriptive page of a bundle available on a provider's website
(our underlined>)

LA TOTALE + INTERNET 30

- » Télé : Sur Mesure thématique La totale : 15 chaînes parmi les catégories Populaires et Sports et 1 choix de la catégorie Premium dont Club illico
- » Internet : Fibre hybride 30

Inclus : Enregistreur HD et Routeur Wi-Fi nouvelle génération en location

LES ÉCONOMIES VIDÉOTRON

- » Économies totales de 180\$ sur 12 mois
- » Location de l'Enregistreur HD incluse
- » Installation gratuite

TÉLÉ

INTERNET

TELEPHONE

MOBILITÉ

105⁹⁵\$ /mois

Tarif courant de 123,00 \$/mois, sous réserve de modification

CONTINUER

► Parler à un conseiller maintenant

ou appelez-nous : **1 877 512-0911**

Plus d'options de contact

- Clavarder avec un conseiller
- Trouver un magasin
- Prendre un rendez-vous avec un conseiller

* Certaines conditions s'appliquent.

► ** Cette offre, d'une durée limitée, s'adresse aux nouveaux clients Résidentiel de Vidéotron et consiste à accorder un rabais promotionnel de 15 \$/mois pendant 12 mois.

En date du 27 septembre 2017, le tarif promotionnel réel est de 105,90 \$/mois (108,90 \$ à compter du 1er mars 2018) et s'applique au moment de l'abonnement au forfait Télé La totale et à l'accès Internet Fibre hybride 30.

Club illico est inclus dans le forfait La totale à titre de chaîne Premium (d'autres chaînes Premium sont offertes). Des frais additionnels peuvent s'appliquer à la sélection de certaines chaînes premium dans les forfaits suivants: la Découverte Plus, le Fan de Films et Séries et la Totale. La location de l'Enregistreur HD est incluse dans ce même forfait. La location du Routeur Wi-Fi nouvelle génération (un seul appareil par compte client) est également incluse, sans frais, pour les clients qui s'abonnent à un accès Internet Fibre hybride 30, ou supérieur, et le maintiennent.

► ** Le rabais promotionnel de 15 \$/mois est garanti pour une période de 12 mois avec ce forfait.

Le tarif de 123,90 \$/mois s'appliquera à compter du 13e mois, sous réserve de modification.

Les offres, les services et les tarifs sont modifiables sans préavis et peuvent varier selon les régions. Taxe municipale de 0,46 \$ pour le service d'urgence 911 et autres taxes en sus. Certaines conditions s'appliquent. Offert là où la technologie le permet. Des frais supplémentaires de 3 \$/Go, jusqu'à un maximum de 100 \$ par mois, seront facturés si votre consommation de données combinée (aval et amont) dépasse les 150 Go compris dans votre forfait mensuel. Prêt du modem câble gratuit.

** La valeur de l'économie réelle de 180 \$ correspond au total du rabais de 15 \$/mois sur les services de Vidéotron pendant une période de 12 mois.

Table 6

Excerpts from the descriptive page of a bundle available on a provider's website
(our underlined and arrow)

The image is a screenshot of a website's promotional page for a 'Télé + Internet' bundle. At the top, there are two blue buttons: 'Télé + Internet' and 'Créez votre forfait'. Below these, a red arrow points to a dark blue banner that reads 'Économies garanties de 38 \$/mois* sur le prix courant pendant 18 mois'. Underneath the banner, the text 'Maintenant seulement' is followed by the price '89,90 \$/mois'. Below the price, it states 'Prix courant de 127,90 \$/mois. Sujet à modification.' and '*S'applique à des périodes de facturation complètes. L'offre prend fin le 18 juin.' Further down, it says 'En prime : installation professionnelle gratuite.' and 'Pour commander, appelez-nous au 1 866 768-1196, clavardez ou [visitez un magasin](#).' At the bottom, there is a link 'Conditions de l'offre' with a circular icon containing a right-pointing arrow.

Télé + Internet

Créez votre forfait

Économies garanties de 38 \$/mois*
sur le prix courant pendant 18 mois

Maintenant seulement

89,90 \$/mois

Prix courant de 127,90 \$/mois. Sujet à modification.
*S'applique à des périodes de facturation complètes.
L'offre prend fin le 18 juin.

En prime : installation professionnelle gratuite.

Pour commander, appelez-nous au
1 866 768-1196, clavardez ou [visitez un magasin](#).

[Conditions de l'offre](#) ⓘ

It should be noted that the asterisk following the mention of a guarantee leads only to an explanation of the billing period (below the price). The asterisk is reproduced nowhere else on the Web page or in the disclaimer to which the page refers.

Table 7

Excerpts from the descriptive page of a bundle available on a provider's website
(our underlined, circles and arrows)

Obtenez une offre groupée avec Internet illimité à 99,99 \$ par mois.



Abonnez-vous dès aujourd'hui à une offre groupée de deux produits avec Internet illimité et un forfait télé Sélection à 99,99 \$ par mois*.

Cette offre comprend le forfait Internet Élan™ 601 et le forfait télé Sélection avec chaîne en prime¹, avec location d'un terminal HD et d'un modem pendant 12 mois.

Économies garanties de 49,99 \$ par mois pendant 12 mois**

Prix courant de 149,98 \$ par mois. L'offre peut être modifiée.

[+VOIR TOUS LES DÉTAILS](#) 

COMMENT L'OBTENIR 

 1 866 270 5801  Live Chat

[Ouvrir une session](#) [Inscription >](#) [CN](#) [English](#) [Trouver un](#)

[X](#) NOTIONS

+VOIR TOUS LES DÉTAILS 

* L'offre, d'une durée limitée, est réservée aux nouveaux abonnés à Internet et au service de télévision dans la zone desservie par le réseau câblé de Rogers (là où la technologie le permet) en Ontario et peut être modifiée sans préavis. Les taxes sont en sus. Des frais uniques de mise en service de 14,95 \$ et des frais uniques d'installation de 49,99 \$ (annulés en cas d'installation par l'utilisateur) s'appliquent. L'utilisation de données est assujettie aux Modalités de service et à la Politique d'utilisation acceptable de Rogers. Consultez rogers.com/modalites pour obtenir tous les détails.

** Les économies réalisées sont calculées en comparant le tarif des offres groupées au prix courant des services individuels pour les 12 premiers mois. Le tarif mensuel courant annoncé s'appliquera à compter du 13^e mois, sous réserve de toute augmentation de tarif.

1. La vitesse de téléchargement réelle dépend du trafic sur Internet, du serveur, de la passerelle ou du routeur, de l'ordinateur (qualité, emplacement au domicile, logiciels et applications installés), des fils en place, du réseau ou

It should be noted that the asterisk following the mention of a guarantee leads only to an explanation of how the monthly savings are calculated.

Confusing bundles

As expected, several providers studied offered bundled services. This type of offer was found more often among the major providers, likely because of their horizontal, vertical and/or diagonal integration, which enables them to offer more services than they can bundle¹²⁹.

We observe that the providers use no standardized terminology to describe this type of offers and resulting discounts from a single provider (discounts that, borrowing the OECD's term, we call "bundled discounts"). Each provider uses its unique wording – which certainly doesn't help a consumer trying to compare offers: "bundled offer," "multi-product discount," "bundle plan," etc.

Moreover, the terms, even general, of bundled discounts vary from one provider to another. Some providers imposed a bundle of a minimum number of services; others required a certain service to be included in the service bundle; and others indicated that a certain service would not be considered in calculating the number of bundled services (bundled discounts generally applied from the moment when a number of services were bundled).

The difficulty in comparing bundled service offers did not stop there. We observe that most offers of bundled services didn't detail the price of each bundled service. A total price is presented, which we assume to include the sum of the price of each service minus the bundled discount, as the case may be. Only one of the providers studied that offered bundled services specified the price of each service and the discount(s) related to the bundle. With all the other providers, it was much more difficult for the consumer to understand the cost of each service and the value of the savings offered. To obtain that information, we had to search the providers' websites for comparable individual offers and make the necessary calculations. The results were at times surprising: Some bundled service offers provided ultimately no savings compared to the total price of individual non-bundled service subscriptions.

False discounted prices for individual services

We noticed that a bundled discount was already applied at times to the price advertised for each individual service, with a note explaining that the discounted price only applied when services were bundled.

¹²⁹ **CRTC**, *Communications Monitoring Report*, p.85: "The communications industry is still highly integrated, with the vast majority of revenues generated by companies operating in eight or more sectors." [Among the following 10 sectors: radio, traditional television services, optional and on-demand services, broadcast distribution undertakings (BTUs), as well as local phone and access services, long distance, the Internet, wireless services, data transmission and dedicated lines.] See also in this regard: **CANADIAN MEDIA CONCENTRATION RESEARCH PROJECT**, *Media & Internet Concentration, 1984-2016. Report*, 2017, online: http://www.cmcrp.org/wp-content/uploads/2017/11/CMCR_Media_Internet_Concentration_27112017_Final.pdf (consulted on April 30, 2018).

We observed this practice among three providers. And yet, they also offered, in parallel to those individual services, bundles for several services (for which the total advertised price thus included the bundled discount).

We find this practice hard to justify. It seems obvious that a service's price announcement should indicate the price of that service, and not a service bundle's partial price. This type of announcement seems clearly misleading and aimed at attracting consumers who are distracted or don't have the time to read the explanations (if available), or at indirectly promoting service bundles. In any case, the goal is certainly not to inform consumers clearly on an essential aspect of the offer.

It should be noted that disclosure of that "detail," i.e. the condition that must be met for the displayed price to correspond with the service's price, sometimes left a lot to be desired, as in the tables below:

Table 8
Excerpts from a page describing a residential phone bundle
on a provider's website
(our underlined and arrows)

[N.B.: The second segment is at the very bottom of the page, and closed by default]

LIGNE RÉSIDENTIELLE

CHOISISSEZ LA TÉLÉPHONIE RÉSIDENTIELLE DE VIDÉOTRON.

Inutile de chercher plus loin, avec nous vous profitez des meilleurs rapports qualité-prix sur le marché¹.

De plus, changer pour Vidéotron c'est simple. On s'occupe de tout, pour vous. Vous conservez votre numéro, vos appareils, et vos habitudes.

À partir de
24⁹⁵\$ /mois

(Prix si combinée à au moins 1 autre service)

CONTINUER

► Parler à un conseiller maintenant

* Certaines conditions s'appliquent.

Prix et conditions

Le rabais de 5\$/mois s'applique sur un abonnement à la Téléphonie Résidentielle de Vidéotron. Le tarif courant de 24,95\$/mois (sujet à modification) est conditionnel à l'abonnement et au maintien de la Téléphonie Résidentielle ainsi qu'à au moins un (1) des services suivants de Vidéotron, soit l'Internet Résidentiel, la Télédistribution ou la Téléphonie Mobile. Taxe municipale de 0,46 \$ pour le service d'urgence 911 et autres taxes en sus. Offert là où la technologie le permet. Prêt du modem câble gratuit. Les offres, les services et les tarifs sont modifiables sans préavis. Le tarif courant de 29,95 \$/mois (sujet à modification) s'appliquera à tous les clients abonnés uniquement à la Téléphonie Résidentielle de Vidéotron. Taxes en sus. Certaines conditions s'appliquent.

Tous les nouveaux clients abonnés à la Téléphonie Résidentielle de Vidéotron bénéficient des appels interurbains gratuits et illimités partout au Canada.

The following three excerpts reproduce the procedure that must be followed by a consumer viewing a cable television offer before he realizes that the advertised price includes at the outset a bundled discount, which therefore will only be applied conditionally.

It is thus not indicated on the first page that the promotional offer actually includes two discounts:

- a discount related to the current promotion (\$11 reduction of the regular price)

- a discount called “bundle discount” (\$7 reduction of the regular price with a subscription to several Bell services)

The promotional price advertised for \$28.95 per month thus cumulates those two discounts. This is not clear, but it’s what must be understood from Table 7.2.

In the end, with that promotion, the consumer will not pay \$28.95 per month, but \$35.95 per month for the advertised service, if he wants to subscribe only to that service, since he won’t be entitled to the “bundle discount” of \$7. Likewise, the bundle’s current price – without an additional service with the provider – will be \$46.95 per month rather than \$39.95 per month.

True, the first advertisement indicates “with a Fibe Internet package.” However, that mention is not located after the promotional price’s advertisement, but a little lower, after the price indicated as the current price. We also find it strange to talk about the “current price,” given that such a price is actually “current” only with a subscription to bundled services. Once a consumer is well informed of the price he will have to pay if he adds the Internet service, he has only to add the price of the Fibe Internet package to know the actual price that will appear on his invoice.

Table 9.1

Excerpt from a page describing a “Good” broadcast distribution package
on a provider’s website
(our underlined and arrows)

Forfaits tout inclus

Le moyen le plus simple de choisir votre programmation et d’en avoir plus pour votre argent.

Avantages :

- ✓ Enregistreur Partout chez vous 4K inclus avec un forfait 3 services admissible¹
- ✓ Économies mensuelles du forfait
- ✓ Prix moyen par chaîne plus avantageux

Bon



Les grands réseaux et plusieurs des chaînes spécialisées les plus populaires.



Voir les chaînes



Enregistreur Partout chez vous 4K inclus avec un forfait 3 services admissible¹.

Économies garanties de 11 \$/mois* sur le prix courant pendant 1 an

Maintenant seulement

28,95 \$/mois

Prix courant de 39,95 \$/mois. Avec un forfait Internet Fibe. Sujet à modification.
*S’applique à des périodes de facturation complètes².

Commander

Conditions du prix et de l’offre ↻

It should be noted that the price advertisement indicates “Now only” and that this provider also uses the practice of “Guaranteed savings” rather than the price guarantee.

Table 9.2

**Excerpt from the window “Pricing and offer details” of the “Good” bundle
(our underlined)**

Conditions de l'offre

Le forfait Bon comprend :	
Bon	43,95 \$/mois
Frais de service numérique	3,00 \$/mois
Promo télé – 12 mois	-11,00 \$/mois
Rabais du forfait	-7,00 \$/mois
Prix promotionnel	28,95 \$/mois
Prix courant	39,95 \$/mois

À jour en date du 15 avril 2018. Offert aux nouveaux clients résidentiels Bell Télé du Québec dans certains immeubles résidentiels, là où l'accès et la technologie le permettent. Pour certaines offres, le client doit choisir la facturation électronique et créer un profil Mon Bell. Modifiable sans préavis et ne peut être combiné à aucune autre offre. Taxes en sus. D'autres conditions s'appliquent. Toute partie du programme Forfait de Bell peut être modifiée, annulée ou résiliée en tout temps. Bell n'est pas tenue de fournir la réduction du Forfait pendant toute la durée d'un contrat à terme pour des services admissibles, y compris les services admissibles aux réductions; voir bell.ca/detailsforfait. Le forfait télé Départ n'est pas un service Bell admissible.

Fermer

Table 9.3

**Excerpt from the Web page to which the previous page invites us to go
(our underlined)**

Bell Mobilité	+
Bell Internet et services à valeur ajoutée	+
Bell Téléphonie	+
Bell Télé	+
Forfait de Bell	-

En quoi consiste la réduction associée au Forfait?

En vertu du programme Forfait de Bell (le programme), Bell Canada ou ses sociétés affiliées (collectivement, « Bell » ou « nous ») offrent aux clients admissibles une réduction sur certains forfaits et options (services admissibles), sous réserve que votre abonnement comprenne une certaine combinaison de services.

À combien s'élève la réduction associée au Forfait?

La réduction associée au Forfait retranchera entre 1 \$ et 7 \$ à votre facture mensuelle pour le service admissible applicable (telle que définie ci-dessous) aux services admissibles aux réductions. La réduction associée au Forfait sera appliqué à un maximum d'un service admissible aux réductions pour les services admissibles applicables. Pour obtenir la liste complète des services admissibles aux réductions, rendez-vous à l'adresse www.bell.ca/services-admissibles-forfaits

Comment puis-je obtenir la réduction associée au Forfait?

Pour être admissible à la réduction associée au Forfait,

- vous devez conserver un abonnement continu à au moins deux (2) des catégories de service de Bell suivantes: Téléphonie, Internet, Télé et Mobilité (chacun, un « service admissible »);
- vos services Mobilité doit être un forfait consommateur postpayé de Bell Mobilité, et non un forfait prépayé ou un forfait d'affaires;
- au moins un de vos services admissibles doit être un service admissible aux réductions;
- les comptes de vos services admissibles aux réductions doivent être réunis sous le même nom et la même adresse de facturation sur la facture groupée de Bell (« Facture unique »);
- vous devez respecter les modalités qui s'appliquent à vos services de Bell; et
- tous les comptes de vos services de Bell doivent demeurer en règle.

Vague promotional terms

Beyond the price advertisements themselves, we observed that the providers' promotional terms were rarely visible merely from reading an advertisement's main text. Instead, they were presented in a notice to which the reader had access by clicking on a particular heading or by scrolling through a drop-down menu.

In those notices, terms intended for eligible customers or covered areas were sufficiently clear and quickly disclosed in the text. However, it was difficult at times to determine if those terms were exhaustive or if other terms applied to the offers advertised by certain providers. Why? Due to the prevalence of vague mentions of the type "other conditions apply." In one case, that mention appeared no less than three times in a provider's single ad! Unfortunately, those three mentions were never followed by an explanation or a link to one.

We contacted the customer service of two providers making offers including such mentions. In neither case could we obtain a clear explanation about "other conditions apply" regarding the offers. During a Web chat, a representative referred us to taxes that may vary "depending on the province serviced or if the location was a native reserve." And yet, the mention "Taxes extra" was already elsewhere in the disclaimer. Another provider first explained that the mention "other conditions apply" pertained to the first invoice's higher amount (payment for the first two months). Further questioned on the possible existence of other conditions, the representative was content to refer us to the notice's content – the same advertisement that included the mention that had caused our confusion and motivated us to contact the customer service.

4.2.2. PRESENTATION OF FEES

Further analysis of the offers we studied revealed that additional fees would be added to the advertised price in most cases.

Those fees can be divided into two categories: one-time fees, such as activation or installation fees, added to the initial invoice; and recurring fees, generally related to equipment rental (modem, HD recorder), added to the monthly invoice.

Generally, we observe major differences in the ways those fees are disclosed to consumers consulting the providers' websites. Where and when are the fees disclosed, which ones will be added (or may be added) to the disclosed price? How are they named or explained? There is no uniformity among providers, which certainly makes it much more complicated for the consumer to analyse and compare the total cost of several providers' offers.

Fees everywhere

Among the majority of providers studied, we observed that a consumer has to be very proactive to detect, in the promotional documentation, what fees will apply to him. He has to scroll down texts or successively open several tabs on a Web page to obtain full information on those various fees. Necessary information is rarely visible in the body of the text and rarely presented in a single location.

Only one provider presented one-time installation fees directly below the advertised price, in the same coloured text box. Although written in characters much smaller than those for the price, those fees were visible to a reader who would pay attention to the price (this is generally what he would do, according to our discussion group findings). Strangely, that same provider did not mention recurring equipment rental fees (for a TV receiver) below the advertised price, although that equipment is mandatory to benefit from the service and those rental fees will be added, if applicable, to each monthly invoice. Those recurring fees (up to \$20 per month) were disclosed instead in a window titled “Terms of the Offer,” which a consumer could access by clicking on that title, a little lower. Why not mention recurrent rental fees before or after the one-time fees? Even better: Why not integrate those rental fees, for equipment of mandatory use, with the advertised monthly price¹³⁰? That choice by the provider, which had disclosed one-time fees in exemplary fashion, is certainly regrettable.

Other providers had rather chosen to present one-time and recurring fees in tabs displayed below the offer’s general presentation. It should be noted that the fees were never presented in the tab opened at first on the tab bar. So the consumer had to click on the other tabs’ titles to discover that tab’s content. But the tabs’ titles varied greatly and didn’t always mention fees. Some terms were too technical (“DSL only,” for example) or much too vague (“Offer Details,” for example). In several cases, mentions of the various fees were scattered among different tabs, although one tab was specifically identified as pertaining to the additional fees. With one provider, different additional fees were mentioned in no less than three distinct tabs (named “DSL only,” “Modem” and “Other Fees”).

Lastly, other providers presented one-time and/or recurring fees in a notice that the consumer had to open (in the form of a drop-down menu or modal window). Those notices were indicated near the price by a symbol, number or asterisk, of varying visibility depending on the provider: the symbol’s size or colour, the Web page’s design, etc. Here is an example:

¹³⁰ A possible explanation: A subscriber who already has a compatible device, or buys one upon subscription, will not need to rent one from the provider. While such cases are the exception rather than the rule, we don’t think they can justify omitting fees that will be mandatory for most subscribers. Moreover, that explanation doesn’t hold when what is mandatory is not the equipment’s usage, but its rental or purchase.

Table 10

Excerpts from a page describing a package available on a provider's website
(we added a red arrow indicating the symbol)

Gigabit Élan de Rogers (Offre d'une durée limitée)

UTILISATION ILLIMITÉE

Vitesse de téléchargement pouvant atteindre :

1 Gbps TÉLÉCHARGEMENT¹ **30** Mbps TÉLÉVERSEMENT

Forfait idéal pour : 5 personnes + Internet et lecture en continu à volonté

Comprend : Location du modem ⓘ

79,99\$ par mois ⓘ

Reg. 452,00\$ par mois
Économisez 72,00\$ par mois sur le prix courant pendant 12 mois**

COMMENT L'OBTENIR

DÉTAILS

Gigabit Élan de Rogers (Offre d'une durée limitée)

UTILISATION ILLIMITÉE

Vitesse de téléchargement pouvant atteindre :

1 Gbps TÉLÉCHARGEMENT¹ **30** Mbps TÉLÉVERSEMENT

Forfait idéal pour : 5 personnes + Internet et lecture en continu à volonté

Comprend :

Total mensuel

- 69,99 \$ par mois² (service)
- 10,00 \$ par mois (location du modem)
- 79,99 \$ par mois² (total)

Frais uniques :

- Frais d'installation : 49,99 \$ (installation autonome : annulés)
- Frais de mise en service : 14,95 \$

Left: symbol identification (by a red arrow)

Right: the window that opens when the symbol is clicked on

In the above example, the modem rental cost is included in the advertised monthly price. Unfortunately, that spontaneous inclusion of the mandatory cost is the exception rather than the rule in the offers we analysed.

Few explanations of one-time and recurrent fees

We observed during our survey a flagrant lack of explanations regarding fees for equipment, modems, HD recorders or WIFI bridges. Can a consumer use the equipment he already has (or acquire that or equivalent equipment from the provider or elsewhere) or must he rent the equipment directly from the provider? Can he, to avoid recurring rental fees, purchase the equipment from the provider? In the majority of offers examined, we weren't able to answer those questions.

For example, while Distributel and Teksavvy presented the cost of renting or purchasing a modem very similarly, the consumer obligations differed widely. But in neither case was that information available in the promotional offer. We had to follow the online purchasing procedure to find those differences. The result? In one case, use of the provider's modem is mandatory, as is payment of related fees; in the other case, the consumer may use his own modem free of charge, and thus avoid recurring rental fees.

Another provider announced a list of equipment-related fees in a "Price Details" tab, without providing the slightest explanation regarding the equipment's usefulness or necessity. Our call to the provider's customer service clarified the situation: purchasing or renting none or the six devices listed was mandatory. In addition to preventing a consumer from calculating the total amount of fees he will be charged, we doubt this way of proceeding benefits the provider. In our initial reading of the announcement in question, we rather had the impression that many fees would be added to the amount, thus making the initial price much less interesting.

Table 11**Excerpt from a page describing a package available on a provider's website**

Présentation		
Détails du prix		
Prix de groupe		
		Prix
Frais activation		49,95 \$
Utiliser votre propre modem (voir liste)		20,00 \$
Frais déménagement		85,00 \$
		Prix Achat Prix Location
Routeur Wi-Fi haut débit sans fil économique		74,95 \$ N/D
Répéteur Wi-Fi		74,95 \$ N/D
Routeur SR400		119,95 \$ 3,95 \$
Extension réseau filaire		99,95 \$ N/D
Hitron CDA3		129,95 \$ 5,95 \$ - contrat 12 mois
Modem 3.0		99,95 \$ 5,95 \$/mois - contrat 12 mois
Frais Livraison		15,00 \$ 15,00 \$
Ramassage Modem		0,00 \$ 0,00 \$

Among other providers, the difficulty resulted instead from the presentation of all the fees, without any specifics about the products, packages or services to which those fees applied.

That was the case for a Web page describing a package, although the page included a “one-time fee” tab! Why indicate a \$15 mobile activation fee when the offer was only for Internet service access? The offer was rendered even more complex by a mention that there was no installation fee “upon subscription to a DUO, TRIO or QUATTRO package.” What does that mean? To understand whether the package of which the consumer consults the descriptive Web page is one of the eligible packages, he must ultimately consult the footnotes. All that to identify the applicable one-time fees, despite a tab dedicated to that question.

Uncertainty regarding government fees

Mandatory government fees (monthly fees) that apply to certain services are also disclosed randomly at times¹³¹.

While no provider studied included the amount of taxes in its price announcement¹³², the situation is less clear regarding the 9-1-1 service fee. Some providers include it in the price of the advertised services, and others don't¹³³. Moreover, the information is not always easily accessible; finding it often requires reading footnotes or making a more general search on a provider's website. And with two of the providers studied, we were simply not able to know if the advertised price of phone services included the 9-1-1 fee. Although the amounts involved are very low, we think this is another obstacle for a consumer trying to evaluate the total amount of his future invoice and/or compare several providers' offers of residential or wireless phone services.

Uncertainty about applicable fees after the promotional period

We observe another difficulty for a consumer trying to understand the total recurring fees during the term of his contract. Some of the advertisements examined presented incomplete information about applicable fees after the promotional periods. This was the case for an offer that mentioned "HD terminal and WIFI modem rentals included for 24 months," without specifying the amount of rental fees after that period.

4.2.3. THE GENERAL IMPRESSION GIVEN BY ADVERTISED PRICES AND DISCOUNTS

Finding 1: Advertised prices unrepresentative of the actual total cost

In most cases, we observed that the providers' advertised prices represented only the monthly price for services. The advertised prices don't include the many fees a consumer has to pay month after month to benefit from a service. Price advertisements presented in this way don't enable a consumer to simply and quickly know the advertised package's actual cost and assess whether it corresponds to his financial capacity. Nor do they help resolve the problem of surprise bills, decried by consumers as well as the CRTC and the CCTS.

Since they're not monthly fees, it's understandable that one-time fees are not integrated with the monthly price announced by providers. But to ensure a consumer's awareness

¹³¹ As mentioned above, providers are allowed not to include, in the full advertised price, fees required by a federal or provincial law "where, under that Act, the duties must be charged directly to the consumer to be remitted to a public authority." *Regulation respecting the application of the Consumer Protection Act*, op. cit. note 88, sec. 91.8.

¹³² The footnotes of the offers made by almost all the providers studied contain a mention that taxes are extra.

¹³³ Such fees were included in prices advertised online by Primus, Bell and Teksavvy, but not by Videotron and Rogers. The information was not available on the Telus and Ebox websites.

that he must pay those fees when subscribing – particularly since the fees may vary among providers –, they should be quickly made visible in the offer.

At the time we examined the offers, that was rarely the case. Rather, a consumer had to search an offer's Web page for those fees and necessary explanations for him to know and understand them. And yet, the solution – mentioning one-time fees directly below the price announcement – seems so simple...

The case of recurring fees is much more complex because they most often apply to equipment that is necessary for benefiting from the services offered and that can be available in different ways: renting, purchasing (from the provider or elsewhere) or renting to buy equipment, or using one's own equipment. Among the majority of providers of which we examined the offers, a consumer could not use his own equipment. Instead he had to rent or purchase equipment from the provider. It was thus impossible for him to actually benefit from the service at the advertised price, at least without a prior purchase. Indeed, it would be impossible to navigate the Internet or watch television without the required modem or digital terminal. So clearly, the advertised price, when acquisition of equipment is also required, misleads consumers about the service's true cost if the equipment's rental fees are not included in the service's monthly price or if its purchase cost is not included in the one-time fees charged at the outset of the subscription.

First, we think if the equipment is mandatory, a mention to that effect should appear directly beside the advertised price. Acquisition options and their cost should also be clearly visible. True, disclosure can quickly become complex when a provider offers several possible acquisition options and/or several services, each requiring distinct equipment. However, the provider is responsible for making sure to provide clearly – with necessary explanations – the actual cost of its offers. Failing that, the situation becomes too complex for consumers.

One thing appears certain: When equipment rental is mandatory and the only option for a consumer, its cost should always be included directly in the advertised price, since the equipment and service are then indivisible in the service offer.

And the CPA, in all of this, an article of which expressly requires the announcement of the full price? Unfortunately, it doesn't appear very well adapted to this practice we observe of not disclosing equipment fees in communications service offers. The Quebec Act prohibits a merchant from charging a higher price than that advertised for a service. Are equipment rental fees charged for the service itself or for a good making it possible to benefit from the service¹³⁴?

Finding 2: Calculating the full monthly cost is possible, but improbable

Admittedly, with few exceptions, all the necessary information for calculating a service's full monthly cost is available on the provider's offer page, and it is theoretically possible that

¹³⁴ Again, the CPA prohibits merchants from omitting a material fact. That prohibition doesn't imply that a merchant must include equipment-related fees in the total advertised price, but still means that those fees must be disclosed clearly to the consumer.

the consumer will make such a calculation. That operation's level of difficulty varies widely between providers. Often, several tabs must be opened or fine print must be read carefully to identify the fees that could be added to the advertised price. Then those fees' applicability must be understood, particularly those related to equipment: *Do I need a router? Should I rent a modem from if I already have one (of the same or another brand)? Does the credit for renting an HD recorder apply to me?* Such questions may confront a consumer who would try to calculate his package's actual monthly cost, beyond the advertised price.

"Businesses should not assume that consumers read an entire Web site, just as they do not read every word on a printed page¹³⁵," stated the Competition Bureau. Communications service providers are evidently not listening to that word of caution. Essential price information is certainly "disclosed" generally, but to learn it a consumer must almost certainly read the provider's entire Web page advertising the service's price. Is it reasonable to require that of him? Does his obligation to find every fee that can be added to the advertised price meet the requirement of adequate and transparent disclosure, essential for the consumer to make an informed decision? We think not.

4.2.4 PRESENTATION OF OTHER ESSENTIAL ASPECTS

Although this study focuses more on providers' disclosure of price information and other monetary terms of promotional offers, we think it relevant to discuss briefly the disclosure of other essential elements of providers' service contracts, such as services and options offered and usage limits (including overage charges).

Unacknowledged contracts

The great majority of the offers we studied pertained to open-ended contracts. At least, we conclude that in the absence of contrary information¹³⁶. The providers didn't generally specify in their offers the type of contract proposed, except contracts that were mandatorily fixed-term. The providers also seemed averse to use the word "contract" and referred rather to "agreements."

We mentioned above what we thought of that willingness to deny the existence of a contract while refusing to use the word.

Due to the lack of available information on the nature of the contracts, we tried to obtain more details through the chat service on the providers' websites. The answers we got were quite troubling. In most cases, the customer service representatives told us (even doubling down despite our insistence) that they offered packages with no contract¹³⁷.

¹³⁵ **COMPETITION BUREAU**, *Guidelines*, op. cit. note 92, p.5.

¹³⁶ A broader search on the providers' websites appears to confirm that tendency to offer more and more open-ended service contracts. Wireless phone services seem to be those where the most fixed-term contracts are still offered, possibly due to the offer of subsidized devices.

¹³⁷ Two Bell representatives told us, during chat discussions on the provider's website, that there was no contract. Distributel's "smart online assistant" wrote us that "no-contract packages are offered at all times." A Teksavvy representative wrote us: "No contracts at Teksavvy!". Then he added "None whatsoever." Inversely,

Relatively well advertised and explained services

Generally, providers' offers clearly indicated the services and options included. The services' main terms – such as download or upload speeds, data transfer quantities, call times or television channels – were clearly visible in the offers.

Internet services featured the most varied presentations and explanations of the service and terms. The majority of providers named their package according to two main features¹³⁸ – maximum download speed or capacity: *Fibre 60*, *DSL 6 Unlimited*, *Internet Service 16*, *FTTN Extreme 25*, etc. Several also added the expression “high speed” to packages' names, although maximum download speeds were at times lower than the CRTC's new broadband objective (50 Mbps)¹³⁹. We're concerned that an Internet service with a maximum download speed of 15 Mbps is presented, even now, as a “high speed” service to consumers, who don't necessarily have the knowledge to understand the significance of such a speed.

We observed that providers were also aware of users' often limited understanding of download and upload speeds expressed as *Mbps*. So independent providers' offers often included explanatory sections or paragraphs with such titles as “What do you get with x Mbps?”. Several providers also presented examples of bandwidth consumption in their offers, to help consumers better understand the proposed packages' download capacity (explanation of upstream and download transfers, examples of high-consumption websites or applications, etc.). That information is likely very useful for consumers to understand the proposed packages and can only help consumers choose an Internet package that actually corresponds to their needs. Still, we question the accuracy or clarity of certain examples observed in the providers' offers. It is true that the necessary bandwidth for viewing a movie will vary widely depending on its duration or image quality. But those specifics were rarely available in the examples provided, so that the latter were at least incomplete. For instance, depending on the provider, the necessary bandwidth consumption for viewing a movie will be 700 Mb, 825 Mb or 5 Gb. This represents a ratio of 1 to 7 – which will strongly influence a consumer in his choice of a package, depending on his awareness of that information in estimating his bandwidth need.

Discreet disclosure of usage limits and overage charges

A 2017 study produced by Union des consommateurs described more thoroughly the usage limits and *acceptable usage policies* of telecommunications service providers. Generally, that study's findings still fully apply to the offers examined in the present study:

a Videotron representative answered this: “A service contract explaining the terms, yes. There is no fixed-term contract for residential services.”

¹³⁸ Several discussion group participants admitted having little understanding of those indicators and focusing more on the price in analysing Internet access offers.

¹³⁹ **CRTC**, *Telecom Regulatory Policy CRTC 2016-496*, par. 80; **CRTC**, *Closing the Broadband Gap*, online: <https://crtc.gc.ca/fra/internet/internet.htm> (page consulted April 20, 2018).

Most of the time, the providers will mention only in the small print footnotes that the services are subject to the terms of service or to the acceptable use policy, which in itself reveals little on the existence, the nature or the scope of the limits that may be applied. The consumers will, thus, only know about those limits when they read the said policies. Sometimes, the providers don't even mention the acceptable use policy in the footnotes¹⁴⁰.

We do notice that a few providers seem more transparent about overage charges. Those charges were more often mentioned in the offer's main text or in tabs detailing the price or fees. Still, no less than half of the providers studied mentioned the charges only in disclaimers a consumer can easily miss in a quick reading of the offer.

4.2.5 THE USE OF DISCLAIMERS

Unsurprisingly, we often found disclaimers in the offers of providers we studied. Five of the eight providers used such disclaimers, including the four main providers.

The Competition Bureau has issued guidelines for such disclaimers, notably due to risks of indications that can mislead consumers, but we observe that a lot of the federal agency's "advice" is not followed by providers.

Content of disclaimers: Important information, but necessarily misleading or contradictory

First, we note the length of most disclaimers observed in our study. They often contained at least five paragraphs and disclosed a wide variety of information. Whereas, according to the Competition Bureau, those disclaimers should aim at clarifying or completing certain main indications¹⁴¹, we thought that in several cases they significantly changed some of the main related indications, and amounted more to a correction than a mere clarification. According to the Competition Bureau, this implies that the corrected indication is misleading.

As mentioned above, disclaimers commonly contained essential information for a consumer to evaluate the amounts he would have to pay during the term of the contract, for example by disclosing mandatory equipment installation or rental fees, or explaining the reduced price's limited application time or the discount guarantee. Can we really speak of mere clarifications of monthly prices when additional mandatory monthly fees for renting a modem are disclosed in a disclaimer, so that the monthly price announced in the main text is increased by several dollars?

The disclaimers also frequently contained vague unexplained mentions, such as "other conditions apply" or "terms may apply." Those mentions were all the more difficult to interpret because of the prevalence of hyperlinks in the disclaimers. Do we have to follow

¹⁴⁰ **UNION DES CONSOMMATEURS**, *Unlimited... Really? Are Consumers Adequately Protected?*, op. cit. note 63, p.30.

¹⁴¹ **COMPETITION BUREAU**, *Enforcement Guidelines*, op. cit. note 92, p.9.

all those hyperlinks to obtain complete information, and find out about the “other conditions”? It’s hard to know...

To illustrate the labyrinth of those hyperlinks, we will use the example of Bell, the disclaimers of which were especially rich in hyperlinks. (But it wasn’t the only provider to operate in this way.)

Some of that provider’s disclaimers contained up to five distinct hyperlinks, including one on the page titled “Legal Notice.” Several disclaimers thus contained the mention “Subject to your compliance with the terms and conditions of your Internet service agreement found at bell.ca/agreements,” which led to the provider’s “Legal Notice” page. That Web page contained the following 15 hyperlinks leading to pdf documents or other Web pages on the website:

- Bell Terms of Service
- Bell Connected Car Terms of Service
- Bell Terms of Service (three hyperlinks to the same document)
- Bell Tech Expert Service Agreement (three hyperlinks to different documents depending on the date when the customer subscribed)
- Regulated Terms of Service
- Statement of Consumer Rights
- The Bell Tariffs
- Unregulated Bell Local Exchanges in Ontario and Quebec
- List of Unregulated Local Services
- Bell IP Relay Service Limitations
- Bell Bundle - Services and features eligible for a discount

Again, the disclaimer on the Web page containing the initial hyperlink pertained to the terms of the Internet service agreement. To which subsequent hyperlink did that initial hyperlink refer? No explanation was given in the disclaimer. An analysis of the hyperlinks listed led us finally to the relevant document “Bell Terms of Service,” a 16-page document, with no table of contents, that includes, in Schedule B, the provider’s acceptable usage policy with which a user of the Internet access service must comply. That’s quite a journey to obtain those essential terms of use, since not complying with them can lead to cancellation of the contract or even to a criminal or civil lawsuit¹⁴²!

Visibility of disclaimers: Best for alert and proactive consumers

In the light of the above findings, it is undeniable that the information presented in the disclaimers are often important to the consumer, and that he should read them to be able to make an informed decision. But reading a disclaimer depends on its visibility on the provider’s Web page. In this regard, the following rule applies: the more necessary the disclaimer for preventing a statement from being misleading, the more that disclaimer should be visible, accessible and easy to find.

¹⁴² For postpaid services, the provider is required to provide the customer with a copy of documents related to the contract (e.g.: privacy policies and fair usage policies) when a contract is being entered into: *Wireless Code, op cit.* note 58, section B(1).

In the majority of cases, disclaimers were presented in the form of “drop-down texts,” which the consumer had to expand vertically by clicking on the heading. We have noted several aspects that hinder the visibility of those disclaimers. The drop-down texts were generally placed at the very bottom of the provider’s Web page, and at times were even separated from the main offer by advertisements for other services from the provider. The drop-down texts were always in fine print. In several cases, the colour of headings didn’t stand out from the rest of the Web page.

In other cases, advertisements were presented in a pop-up window that the consumer could view by clicking on a heading. As opposed to advertisements in a drop-down menu, the pop-up window’s heading was generally near price indications, thus making it more visible.

The advertisements’ headings suggested that information could be found, but not necessarily information important or even essential to the consumer. The headings referred to no specific element to which supplementary information could pertain; for example, “terms of service,” “see details” or “terms and conditions.” Considering that according to the Competition Bureau, the heading “For more details, see below” was insufficiently explicit regarding a disclaimer’s nature and importance¹⁴³, we strongly doubt that the headings observed in the offers analysed would rate any better.

Whatever the disclaimers’ formats, we also noted a paucity of visual clues alerting consumers of the disclaimers’ existence on the rest of an offer’s Web page (except for the disclaimers’ headings). Those clues were limited to asterisks, numbers and stars near the advertised price or simply in the offers’ general presentation. Those symbols rarely attracted attention, were most often small, and often in the same colour as the text that followed. In most cases, it was impossible to access a disclaimer by clicking directly on the symbols.

Here are three examples of bundle presentations on the websites of providers that use disclaimers (which we identified by a red arrow). While the first example is relatively visible due to the main text’s proximity and the use of a distinct colour, the two others are much more difficult to detect.

¹⁴³ **COMPETITION BUREAU**, *Enforcement Guidelines*, *op. cit.* note 92, p.10.

Table 12
Page describing bundles available on a provider's website
 (we added a red arrow to indicate the disclaimer)

The screenshot displays the Primus website's offerings for Internet 16 and residential phone services. The page is structured with a header, a main content area, and a footer. A red arrow points to a disclaimer on the left side of the page.

Header: The header includes the Primus logo, navigation links (Résidentiel, Affaires, En gros, English), and service categories (Offres groupées, Internet, Téléphonie, Interurbain, Sans-fil). It also features a search bar and a 'PANIER' icon.

Main Content Area: The main content area is titled 'Offre-valeur Internet 16 et téléphonie résidentielle numérique'. It features a large image of a laptop and a smartphone. Below the image, there are two columns of text describing the services. The left column lists features like 'Utilisation Internet illimitée', 'Vitesses de téléchargement en aval jusqu'à 16 Mo/s', and '11 comptes de courriel'. The right column lists features like 'Utilisation Internet illimitée', 'Vitesses de téléchargement en aval jusqu'à 16 Mo/s', and '11 comptes de courriel'. Below the text, there are two pricing options: 'Entente D'un An' for \$69.95/mois and 'Entente De 2 Ans' for \$54.95/mois. A red arrow points to a disclaimer on the left side of the page.

Footer: The footer includes a 'Services' section with links to 'Offres groupées', 'Internet', 'Téléphonie', 'Interurbain', and 'Sans-fil'. It also includes a 'À Propos De Nous' section with links to 'Profil de l'entreprise', 'Carrières', 'Partenaires d'affilié', 'Services d'accessibilité', 'Politique d'utilisation acceptable', and 'Politique de confidentialité'. The footer also includes a 'Soutien' section with links to 'Soutien', 'Gérer vos comptes', 'Portails de téléphonie résidentielle', 'Contactez-nous', and 'Plaintes'. The footer also includes a 'Ventes' section with the phone number '1-877-704-4269' and links to 'Service Aux Clients', 'Contactez-Nous', and 'Soutien Technique - Contactez-Nous'.

Table 13

Page describing bundles available on a provider's website
(we added a red arrow to indicate the disclaimer)

The screenshot displays the Rogers website's 'Internet' section. At the top, there's a navigation bar with the Rogers logo and links like 'Ouvrir une session', 'Inscription', 'ON', 'English', 'Trouver un magasin', and 'RECHERCHER'. Below this, a banner for 'Magasiner > Internet' features a child looking at a tablet and a promotion for a Samsung Galaxy Tab E. A 'Forfaits' section follows, with a note to 'Vérifiez la disponibilité dans votre région' and a 'Code postal' field. The main content area is titled 'Groupez vos services et économisez!' and lists various internet plans. A red arrow points to a disclaimer on the right side of the page.

Tous les détails

Cette offre en vigueur pour une durée limitée seulement en Ontario s'adresse aux clients des services Internet, Télé ou de Téléphonie résidentielle qui mettront en service pour la première fois un forfait sans-fil de Rogers. Consultez également la Politique d'utilisation acceptable à rogers.com/modalites.

**Les économies réalisées sont calculées en comparant le tarif de l'offre groupée au prix courant des services individuels pendant les 12 premiers mois. Le prix courant annoncé s'applique à partir du 13e mois et pourra faire l'objet de toutes les augmentations des tarifs applicables.

1. La vitesse de téléchargement réelle dépend du trafic sur Internet, du serveur, de la passerelle ou du routeur, de l'ordinateur (qualité, emplacement au domicile, logiciels et applications installés), des fils en place, du réseau au domicile et d'autres facteurs. Une connexion Ethernet filaire et au moins une connexion filaire ou sans fil supplémentaire sont requises pour atteindre les vitesses de téléchargement maximales de 1 Gbps pour le service Internet Élan gigabit de Rogers. Consultez également la Politique d'utilisation acceptable à rogers.com/modalites.
2. Les taxes, des frais uniques de mise en service de 14,95 \$ et des frais uniques d'installation (installation autonome : annulée; installation de base : 49,99 \$; installation professionnelle : 99,99 \$) s'appliquent. L'utilisation de données est assujettie aux Modalités de service et à la Politique d'utilisation acceptable de Rogers. Consultez rogers.com/modalites pour obtenir de plus amples renseignements.
3. S'adresse uniquement aux utilisateurs d'ordinateur de type PC. Ne constitue pas une garantie de protection contre tous les risques possibles. Pour obtenir tous les renseignements, consultez rogers.com/protect.
4. La limite d'utilisation est fixée sur une base mensuelle et dépend du niveau de service. Toute utilisation supérieure au volume de données fourni est facturée par tranches (voir les modalités d'utilisation excédentaire associées à votre forfait), jusqu'à concurrence de 100 \$ par mois. L'utilisation excédentaire inférieure à 0,5 Go est arrondie à la baisse. L'utilisation excédentaire égale ou supérieure à 0,5 Go est arrondie au Go suivant.

Confidentialité et CRTC
Choix de pub
Carrières
Services d'accessibilité

Modalités
Plan de site
Relations avec les médias
Se désinscrire de la liste d'envoi
Forums communautaires

Acheter Vérifiez la disponibilité dans votre région Code postal

Trouver un magasin 1-888-764-3771

(+) VOIR TOUS LES DÉTAILS

Relations avec les investisseurs
Responsabilité sociale d'entreprise
Branché sur le succès
À propos de Rogers

Confidentialité et CRTC
Choix de pub
Carrières
Services d'accessibilité

Modalités
Plan de site
Relations avec les médias
Se désinscrire de la liste d'envoi
Forums communautaires

Contactez-nous
Trouver un magasin

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Suivre

5. The Consumer Perspective

The analysis of promoters' promotional documentation gave us a good overview of the presentation of essential information there and revealed certain practices we find problematic. However, to better understand the viewpoints of consumers, we chose to consult them in discussion groups.

We questioned participants about their needs and expectations regarding precontractual information and presented to them a sample of the promotional documents analysed, to obtain their views on the clarity and exhaustiveness of that information and on their understanding of it.

Given the time spent on that type of exercise, it was impossible to present to participants all the webpages examined in the field survey. We selected individual or bundled service offers from Videotron, Bell, Primus, Distributel and Ebox, to show participants a varied sample of disclosures of prices, fees or other terms. The Web pages presented to participants are reproduced in Annex 1.

5.1 Methodological Summary

We collaborated with a specialized firm, Substance Stratégies, to set up and moderate four discussion groups – four in Montreal in French and two in Toronto in English. The discussion groups, held in Montreal on January 31, 2018 and in Toronto on February 1, 2018, grouped 8 to 10 persons per session and lasted at most 120 minutes.

To form the groups, we targeted consumers 25 to 29 years of age, of varied sociodemographic profiles, and subscribing to two or more communications services. Participants were not notified beforehand of the discussions' subject or the sponsor's identity. As thanks to the participants, each received \$75 (in Montreal) or \$85 (in Toronto), in accordance with the research firm's practices.

The report of the firm with which we collaborated is reproduced in annex.

We listened carefully to the recordings of the discussions in order to analyze the participants' speeches. In the following pages, we report on some of the most salient elements and comments from these discussions, presenting the responses into sub-groups, in relation to the questions asked the participants.

5.2 CONTEXT OF THE DISCUSSIONS: PARTICIPANTS DISSATISFIED WITH THE MARKET

Before presenting the discussion group highlights, the participants' state of mind should be described.

On many occasions, the participants expressed strong frustration with providers or the communications service offers in the country. The dissatisfaction was such that they seemed to have difficulty at times to remain focused on the moderator's more specific questions about information disclosure in the providers' offers.

Three major "problems" were mentioned repeatedly. They particularly animated the groups and may explain the cynicism and apathy we observed:

- The participants think they pay too much for their communications services, especially compared to European and American consumers.
- The participants are highly critical of the industry "giants" – Bell and Rogers in Ontario, Bell and Videotron in Quebec – because of their near-monopoly and (very similar) behaviour, which reminded participants of a cartel.
- The participants feel taken for granted by their service provider and complain that customer loyalty is not valued at least as highly as the acquisition of new customers.

Despite those criticisms, particularly virulent against the industry's "big players," the large majority of participants have held subscriptions with them for many years. The only exception was one group: Several younger Toronto participants (25 to 39 years of age) proudly did not do business with Bell or Rogers. This was not the case with young Montreal participants, who, although a little more knowledgeable than their older counterparts about independent providers, didn't use the latter's services.

Wireless services deviated somewhat from that rule: several participants subscribed to that type of services with other providers than the "big players"¹⁴⁴.

¹⁴⁴ Still, the providers with which those participants held subscriptions were often subsidiaries of those same "giants" (e.g.: Fido, Chatr and Mobilicity are Rogers subsidiaries).

5.3 Highlights

5.3.1 A SHOPPING SPREE

The participants said they found shopping for communications services to be a fastidious exercise they only wanted to engage in rarely and quickly, if at all.

The participants call it frustrating and overwhelming to search for information on providers, their offers or prices; they candidly admit having shopped very little for a provider before subscribing. Their low motivation corresponds to the kind of shopping they report: a simple process, not very rigorous.

Two factors appear to greatly influence their choice of provider: the example of persons they know well and the advertising of certain providers. The participants attach a lot of importance to the recommendations or habits of persons in their entourage and seem for the most part to remain with the small circle of providers they know in this way. They also recognize that through ads on TV, online or in the public space, they are “sold” the providers’ offers, rather than engaging in active research¹⁴⁵.

Once motivated by an ad, or by the recommendation of a person in their entourage, consumers generally consult the provider’s website to choose a package or bundle. Everything is done quickly and the participants hardly consult other providers’ websites before making a choice. Nor do they usually consult more-objective third-party sources, such as the comparator tools of Protégez-vous¹⁴⁶ or CompareMyRates¹⁴⁷. In fact, few participants, particularly in Toronto, even know the existence of those sources.

The participants’ quick shopping is also due to their criteria. When questioned about an offer’s most important aspect, they’re unanimous: the price. So much so that they rarely identify another criterion for choosing a package or bundle. Some mention “service” generically, but don’t seem able to elaborate.

It’s not very surprising that the participants find the “best price” so important, considering their dissatisfaction with the high price of communications services.

The interest in bundled services

Searching for a good price often leads the participants to bundled service offers. The large majority of participants subscribed to several services with a single provider. Why? To benefit from “volume” discounts, they answer at first. But during discussions, several admit their justification isn’t so solid. While they spent what they thought was a lot of time and patience to make a choice, several participants recognize that they could “probably” obtain better deals for separate services from various providers. But the participants justify their

¹⁴⁵ That may explain the low penetration of independent providers, with resources that don’t enable as much visibility.

¹⁴⁶ **PROTÉGEZ-VOUS**, *Comparateur de forfaits cellulaires*, online: <https://www.protegez-vous.ca/Technologie/forfaits-cellulaires> (page consulted on April 20, 2018).

¹⁴⁷ **COMPAREMYRATES**, *Find the Best Internet Service Providers in your Area*, online: <https://www.comparemyrates.ca/internet-providers/> (page consulted on April 20, 2018).

choice by the simplicity they associate with bundled services: the concept of a “single window – one provider, one invoice, one payment, one phone number in case of a problem, etc. They view that simplicity as an additional advantage compensating somewhat for potential savings that might result from more extensive shopping with various providers. That “advantage” seems paradoxical: The participants told us later they don’t understand their invoices at all.

The omnipresence of bundled services on the market also has a significant influence. Several participants find it difficult to appreciate the price of individual services offered, notably because they don’t know what proportion of the total price is related to each service included in a bundle promotion or in their own invoice.

5.3.2 GREAT DISTRUST OF PROMOTIONAL INFORMATION

When providers’ promotional information is addressed in discussions, the participants expressed some cynicism. They rather think the advertised price is lower than the price charged in the end. To the question *If a promotional price is \$100, what would be the monthly invoice amount, before taxes?*, most mention \$130 and \$150. Interesting that none suggests \$100!

That distrust of promotional information – or of promotional prices, since that’s the key factor for participants – is likely due to personal experience. Several report nasty surprises when reading a provider’s invoice after subscribing. Installation fees, undisclosed router or modem rental fees, uncredited agreed-to discounts: several unexpected situations are invoked by the participants. Some express anger and others shrug; there is widespread agreement that all providers behave this way.

Beyond prices, the participants find the promotional information complex at times, due to the many fees and options related to each service. This is particularly the case for cable television services, given the various channel packages and the fees for certain premium channels; and for Internet services, given the speed “numbers” that, for lack of references, are poorly understood, particularly among older participants.

The ultimate problem: What have I committed to?

The participants’ problems with providers’ promotional information are exacerbated by their confusion regarding other documents that should inform them, i.e. invoices and the service agreement. That begs the question: Do consumers know what they have committed to? Nothing is less certain.

Most participants don’t believe they have a contract with their communications service provider(s). The discussion took some surprising turns. Some claimed that only the provider had a contract. Others said contracts only applied to wireless phone services. One

even declared the CRTC would simply have prohibited contracts. In short, confusion reigns regarding contracts, which the participants evidently don't read¹⁴⁸.

Invoices don't seem to inform them better about their subscription. The participants find them hard to understand – like a succession of fees and credits of which they often ignore the existence, provenance or reason¹⁴⁹. Several participants admit not paying attention to invoice details unless the total amount seems exceptionally high.

5.3.3 READING PROMOTIONAL DOCUMENTATION: AN ARDUOUS EXERCISE

The documents' "initial clarity"

Spontaneously, the participants rarely emphasize the lack of clarity or the opaque nature of documentation provided. They rather tend to base their understanding of documents on a simple assessment of the overall advertised price.

Curiously, while they expect promotional prices that don't necessarily correspond to the actual prices that will be charged, the participants don't seem very interested in reading the documentation to verify that assumption. They seem to assume that in any case, they won't be able to determine from the documents how much it will actually cost them to benefit from the services offered. So most don't even try, and thus it's impossible to test their assumption of inability.

Moreover, regarding the documents' overall clarity, several participants have difficulty expressing a "neutral" opinion on the subject. Although we tried not to discuss brands and invited participants not to, brand awareness clearly played a determining role in their analysis. Brand awareness or familiarity appears to clarify the offers' information from the start – or make it irrelevant to search for clarity. In Toronto, several participants answered, when asked to assess the clarity of a promotional offer from Videotron, that they didn't know that provider.

Their view of price presentations: the case of Primus

Given that the participants view pricing as the most important aspect of a provider's offer, they often comment on the presentation of promotional and regular prices. One provider's offer was much discussed.

¹⁴⁸ Despite the requirements to that effect in the CPA, and in the *Wireless Code*, Quebec consumers still reportedly receive a copy of the contract concluded with their communications service provider.

¹⁴⁹ Those results appear to match those of a survey conducted by the Manitoba government in 2013-2014 on "introductory offers" (launch discounts or discounts to new customers). 47.7% of persons surveyed thought their invoice didn't clearly indicate the promotional price, the regular price and the promotion's duration: **MINISTER OF TOURISM, CULTURE, HERITAGE, SPORT AND CONSUMER PROTECTION**, *Letter addressed to Jean-Pierre Blais, dated June 12, 2014, "Summary of the Results of Manitoba's 2013-2014 Survey on "Contracts and Billing Practices for Cable Tv and Other Communication Services,"* p.2.

Viewing a Primus offer of temporary promotional prices displayed in smaller characters than regular prices, several participants were surprised, and even confused. By criticizing the provider for not instead emphasizing its promotional prices, several participants involuntarily revealed how thoroughly they had internalized the industry's practices.

However, as the conversation progressed, the participants became more positive toward that presentation of discounts. They came to see it as more transparent and honest. Several said that they wanted to know the "real price" above all, the one they will pay after the short initial discount, and that in that sense, Primus better meets their need by thus advertising its promotions. The temporary discount thus becomes a "bonus" – not what the provider is trying to sell them and what can lead to misunderstandings.

Their view of fee disclosures

Restating their desire to see a "full price" or the "real price," the participants strongly criticized the non-inclusion of fees in advertised prices and the disclosure of fees in fine print or distinct tabs. But the participants aren't surprised by such a practice. Viewing an offer where the tab "Price details" mentions a series of additional fees (mandatory and optional), a participant sighed and exclaimed "That's typical!". "Why don't you just have this in the price?" asked another.

The mention of fees added to the initial advertised price seems to discourage consumers. In some cases, they don't understand the reason for those fees, or understand if they're mandatory or even one-time or monthly. When asked the actual price of the service offered, several participants, although faced with the details, don't even attempt a calculation.

Even when smaller amounts are at stake, such as 9-1-1 fees, some participants deplore their unexpected presence in their invoice: *"If everyone has to pay them, why not include them in the advertised price?"*

Their view of fine print

Another source of criticism: fine print or footnotes in the documentation frustrate the participants a lot, both in Montreal and Toronto, irrespective of their age. Before they are even read, those texts are perceived as "disadvantageous" to the participants, and associated for example with granting a provider rights or prerogatives.

The reaction to fine print is so intense that the participants have difficulty expressing an opinion on the actual content of notices appearing in offers. Indeed, when the participants are asked to read those notices, they try, consciously or not, to avoid doing so. Reluctantly, they quickly go over the paragraphs in a search for "traps."

Conceding that the information is often available in providers' offers on their websites, several participants think the problem results from the way the information is presented, its "formatting," which they call overwhelming. Long texts, fine print, few paragraphs or spaces: the participants see many problems with the presentation of ads included in documentation. The presence of numerous hyperlinks also annoys several participants and

even led a participant to joke that an offer replete with hyperlinks constitutes an “Indiana Jones search and find mission”!

Some also question providers’ presentation of information within notices of which the content is not initially visible to the reader, rather than directly in the body of an offer’s text. They seem particularly annoyed by that practice when fee disclosures are involved.

From the examples available to them, the participants identify practices they prefer, i.e. presenting information in the form of a summary table, bullet points or separated by headings and sub-headings. Those preferences confirm the participants’ desire not to obtain information in a long compact text and in fine print; when confronted by that type of text, they get discouraged and often won’t even try to read it. Several participants explain (proudly) having adopted a ritual when faced with such texts: calling customer service.

5.3.4 PROVIDERS’ CUSTOMER SERVICE: A MIRACLE SOLUTION?

Although they criticize waiting times, the participants say they prefer, to know offer details, calling a provider’s customer service, after quickly looking over its offers online. That call serves to complete a subscription, but also to obtain information available in the documentation they don’t want to read. And they’re not embarrassed to report that. Seeing long footnotes in a provider’s offer, a participant states, for instance: “You see. That’s why I call. I don’t want to read that. I want someone to explain it to me.”

The participants seem to greatly trust providers’ customer service representatives. They expect that all pricing information will be revealed to them instantly, including what they call “traps.” This finding is all the more surprising because they openly say they don’t trust providers’ promotional information. The participants don’t seem bothered by this apparent contradiction and seem rather to feel that their way of proceeding is optimal, since it saves them from reading the fine print that annoys them so much.

And what if there’s a problem? Another call to customer service

The participants explain that if a problem arises, they call their service provider again. Some know about provincial consumer protection agencies and the CCTS, but have never called them. Several doubt the usefulness of calling them; they distrust the processing times and assume that those agencies are more concerned with cases “of greater importance.” Some even question what those agencies could really do for them.

The participants rather think they can “settle” their situation by calling a provider’s customer service to complain and negotiate new terms. Some can hardly conceal their pride in having effected a reduction in the cost of their service, even if that followed a “nasty surprise” at their invoice. This approach is prevalent, particularly among Montreal participants, who have the impression of having thus “beat the system.”

Others also report that if a problem arises, they contact the media to publicize their situation and put pressure on a provider to finally obtain a rate reduction.

We thus observe that although they strongly criticize some providers' disclosure practices, the participants seem little aware of their rights and recourses. They perceive disclosure problems as leverage to negotiate lower rates – without actually trying to know the rate to which could have been entitled. This attitude on the part of discussion participants appears to correspond with the results of a European Commission survey on consumer empowerment, which concluded that consumers have a poor knowledge of their rights, notably regarding merchants' misleading business practices¹⁵⁰.

5.4 Conclusion of the Discussion Groups: A Major Paradox

We observe a certain inconsistency between the discussion group participants' words and actions. On one hand, they say they want more information, explanations and nuances, when necessary, in providers' promotional documentation to avoid nasty surprises when reading their invoice or using services. On the other hand, they're very reluctant to read the promotional documentation, quickly get discouraged in the presence of longer and more-complete texts and candidly admit wanting a quick shopping experience.

During discussions, a few participants realized that inconsistency and seemed to believe that efforts should be made by providers, but also by consumers. For example, here is the conclusion of a Toronto participant:

It's "consumers beware." It really is your responsibility. It's not their responsibility, in the sense that they are offering you the product. You have to be the one to decide whether the product is right for you based on the information. Unfortunately, many times, it's like a treasure hunt. You gotta search and find. [...] Would I like it to be a little more clearly presented, so that I can make an effective decision without being overwhelmed and just give up on the task? Absolutely.

¹⁵⁰ **EUROPEAN COMMISSION**, *Questions & Answers: Consumer Empowerment Survey – Analysis of the results*, MEMO/11/229, 2011, online: [http://europa.eu/rapid/press-release MEMO-11-229 en.htm](http://europa.eu/rapid/press-release_MEMO-11-229_en.htm) (page consulted on May 3, 2018).

6. Consultation of Stakeholders

After completing our research, we hoped to consult stakeholders for their viewpoints. To that end, we briefly presented to them a few highlights of our field survey and discussion groups. A summary document was thus presented to put in context the questionnaire we invited stakeholders to answer¹⁵¹.

We attempted to obtain the participation of communications services companies studied in the field survey, of regulatory and complaint-handling authorities for telecommunications and competition, and of provincial consumer protection agencies¹⁵².

Unfortunately, the participation rate was very low: no member of the industry agreed to answer our questions¹⁵³, nor did any federal authority¹⁵⁴. Only four provincial consumer protection agencies answered parts of our questionnaire: those of Quebec, Saskatchewan, Nova Scotia and Newfoundland-and-Labrador¹⁵⁵.

Due to that low response rate by the stakeholders initially consulted, and to obtain other viewpoints nevertheless, we also communicated with a few professors and researchers, whom we invited to give us their views on the main findings of our research. Professor Marina Pavlović from the University of Ottawa responded to our request. She offers an interesting perspective, given her work on consumer protection and access to justice regarding technologies.

We will summarize here the participants' contribution to that survey.

6.1 Regarding Consumers' Problems with Information Disclosure

We first questioned the various stakeholders about their understanding of the high percentage of complaints to the CCTS for non-disclosure or misleading information. Very few agreed to comment.

Saskatchewan's Financial and Consumer Affairs Authority (FCAA) opined that three causes could explain the high number of complaints:

- *Buried terms within different clauses of lengthy contracts*
- *Price increases or service reduction based on vague terms (e.g. price may increase)*

¹⁵¹ Those documents are reproduced in Appendix 2 and 3.

¹⁵² We sent an invitation and the questionnaire to all the parties. We subsequently sent a follow-up message to those that had not responded.

¹⁵³ Telus and Videotron expressed their refusal to participate. Primus, Teksavvy, Ebox, Distributel, Bell and Rogers simply didn't answer our requests.

¹⁵⁴ Our invitation received no answer from the CCTS. The COMPETITION BUREAU and the CRTC refused to participate. The CRTC explained its refusal by the fact that the CRTC may eventually have to decide on matters discussed in our study.

¹⁵⁵ However, the respondent specified that its comments were "for internal use only and not necessarily the view of this Division, its management or this government." They are not reproduced in this study.

- *Differences in what was implied at the time of the initial contract and what is ultimately applied*

Without commenting directly on the CCTS's numbers, Professor Pavlović reported having observed in her research that the information was not disclosed regularly to consumers.

We also questioned consumer protection authorities on consumer complaints or information requests about the promotional information of communications services providers and about the disclosure of essential elements in agreements with providers. We also wanted to know what advice or information was provided to consumers in those circumstances.

The FCAA reported receiving complaints and/or information requests on this subject occasionally, but said it was unable to provide numbers in the absence of the “non-disclosure” category in its compilation of complaints. The agency explained that it advised consumers as follows: “Take the time to research the elements of the service/product and its total cost before deciding on a long-term contract.”

The Nova Scotia Business and Consumer Services Department reported having received no complaint or request on this subject in the last two years. Generally, when receiving complaints about communications services, the agency refers consumers to the CRTC and the Better Business Bureau serving Atlantic Canada.

Lastly, Quebec's Office de la protection du consommateur (OPC) provided us with a lot of data processed between April 1, 2016 and April 30, 2018 regarding complaints and requests about communications service packages and bundles. But the agency does not classify in a separate category the complaints and requests pertaining specifically to promotional information. The OPC sent us the following summary table, which records complaints and requests received about communications services, as well as cases that were forwarded to the agency's online mediation platform:

Subject	Complaints	Information	Mediation	Total
Communications service package or bundle	1,059	3,208	0	4,267
Mobile phone services	791	2,888	3	3,682
Internet services	352	1,020	0	1,372
Television services	133	471	0	604
Total	2,335	7,587	3	9,925

The OPC also provided us with information on infractions of the *Consumer Protection Act* detected between April 1, 2016 and April 30, 2018 regarding communications service packages and bundles. Of the 3,345 infractions recorded for that period, we find, notably¹⁵⁶:

- 222 infractions of provisions regarding “false representations”;

¹⁵⁶ Data taken from a summary table of infractions recorded by the Office and provided to us during the consultation.

- 152 infractions of provisions regarding “prohibited pricing practices”;
- 99 infractions of provisions regarding “merchant omissions and quality problems”;
- 8 infractions of provisions regarding “prohibited advertising practices.”

As for advice provided to consumers calling upon the OPC, the agency answered as follows:

La Loi sur la protection du consommateur donne au consommateur des recours civils qu’il pourra utiliser contre le commerçant fautif et, ultimement, s’adresser au tribunal pour faire valoir ses droits.

Afin d’aider les consommateurs dans l’exercice de leurs recours dans le domaine des services de télécommunication, l’Office a développé deux trousseaux d’information [qui] comprennent une marche à suivre pour appuyer le consommateur dans sa négociation avec le commerçant, puis dans la rédaction d’une mise en demeure et dans la présentation de son litige à la Division des petites créances.

Le site Web de l’Office comprend également une section d’information consacrée aux services de télécommunication [qui] donne notamment accès à des conseils à suivre avant de conclure un contrat de services de télécommunications.

6.2 Regarding Providers’ Disclosure Practices

We also consulted the various stakeholders to obtain their views of certain disclosure practices that we identified in our field survey and found problematic. Quebec’s Office de la protection du consommateur chose not to comment; Nova Scotia’s Business and Consumer Services Department (BCS) and Saskatchewan’s Financial and Consumer Affairs Authority (FCAA) made only a few comments on the subject.

The practice that provoked the most comments concerns the discount guarantee in the offers of three major providers studied. To the question *Do you think consumers are able to understand the meaning of such a mention and its potential impact on their subscription price during the term of their contract?*, opinions were divided.

The FCAA thought consumers were able to understand, but often didn’t take “future costs” into account when entering into a contract. The BCS didn’t share that view, but stated that “some consumers, particularly those with language barriers or lower levels of education, may not understand that a guaranteed discount is not the same as a guaranteed price. This could be worsened by the fact that paper bills are not always readily accessible.” Professor Pavlović was more categorical. According to her, the average consumer will simply not understand the implications of such a practice.

Regarding to the visibility of information, both the FCAA and Professor Pavlović thought the following practices likely hindered consumers from learning all the relevant information:

- Displaying some information in fine print
- Concealing by default certain paragraphs on a Web page

- Giving access to some information only through multiple hyperlinks

6.3 Regarding Possible Solutions for Better Consumer Information

We also questioned the parties on the current legal framework for provider representations and on the possibility of improving it.

Regarding the legal framework, the parties seemed to think the problems stemmed more from the application of regulations than from the regulations themselves. For example, Professor Pavlović stated the following:

In my view, there are no comprehensive enforcement measures either of the Wireless Code or the provincial consumer protection legislation, which is likely the reason why crucial information is often not disclosed. Which, in turn, leads to consumers not having adequate information. At the moment, often, consumers cannot make an information choice because they lack key information. The first step is to ensure providers' compliance with the disclosure requirements before we can assess whether the legal framework is appropriate.

The FCAA instead reproached the lack of updates to the CRTC's current regulations and to provincial consumer protection laws. The FCAA finds that unless the competent authorities regularly update that framework, it is inadequate for ensuring that the consumer will make an informed choice regarding communications services. The agency also recommended the following improvement: "The full cost of the service for the term of the contract should be prominently displayed in one number (should include all costs increases)."

Professor Pavlović recommended using as a model the new legal framework for the "All-inclusive air price advertising" required by the *Air Transportation Regulations*¹⁵⁷. That framework notably requires the inclusion, in the total price advertised for an air service, mandatory duties and taxes, including those collected for a third party, and the disclosure of all duties and fees charged for related optional services offered by the advertiser¹⁵⁸. That legal framework differs from Quebec's regarding providers' information disclosure before a

¹⁵⁷ *Air Transportation Regulations*, SOR/88-58, Part V.1. See also: **CANADIAN TRANSPORTATION AGENCY**, *Air Transportation Regulations – Air Services Price Advertising: Interpretation Note*, online: <https://otc-cta.gc.ca/eng/publication/air-transportation-regulations-air-services-price-advertising-interpretation-note> (page consulted on May 30, 2018).

¹⁵⁸ *Air Transportation Regulations*, *op cit.* note 157, sec. 135.8:

"Any person who advertises the price of an air service must include in the advertisement the following information:

- a) the total price that must be paid to the advertiser to obtain the air service, expressed in Canadian dollars and, if it is also expressed in another currency, the name of that currency;
- b) the point of origin and point of destination of the service and whether the service is one way or round trip;
- c) any limitation on the period during which the advertised price will be offered and any limitation on the period for which the service will be provided at that price;
- d) the name and amount of each tax, fee or charge relating to the air service that is a third party charge;
- e) each optional incidental service offered for which a fee or charge is payable and its total price or range of total prices; and;
- f) any published tax, fee or charge that is not collected by the advertiser but must be paid at the point of origin or departure by the person to whom the service is provided.

(2) any published tax, fee or charge that is not collected by the advertiser but must be paid at the point of origin or departure by the person to whom the service is provided.

(3) A person who mentions an air transportation charge in the advertisement must set it out under the heading "Air Transportation Charges" unless that information is only provided orally."

contract is entered into. Quebec's legal framework doesn't specify the information that must be disclosed, but prohibits misleading representations or the omission of material information.

As mentioned above, the discussion group participants said (and demonstrated) that they were very reluctant to read promotional documentation, but that they wanted more information and explanations to avoid surprise invoices. That inconsistency pointed out in our study, between the participants' words and deeds, has also prompted a few comments and solution proposals to help them obtain information more easily.

The FCAA proposed that the first page of communications service contracts mention the contract's total cost for its entire term. But that solution would in no way correct the lack of information manifested before conclusion of the contract.

Professor Pavlović opined instead that a legal framework would not necessarily meet consumer needs:

Additionally, and you pointed to that too—people want more information but they do not want to spend more time on reading lengthy documents. This is something the legal framework itself cannot fix and requires engagement of multiple stakeholders.

She proposed a distinct approach for ensuring that consumers are able to understand the important information:

- 1. People need tools that would “translate” abstract documents and brochures into concrete information and steps.*
- 2. Tools alone are not enough. There is a huge need to engage information mediators (community organizations, libraries, consumer organizations, legal aid clinics, etc.) to both prepare people before a transaction and after if there is a problem.*

Conclusion

While communications services have become almost essential for consumers, the service providers' offers remain highly complex in many cases: prices, discounts, equipment fees, included services and options, terms of each service, etc. Consumers are often trapped in agreements they don't understand fully before entering into them.

Providers' misleading representations, particularly about service prices, are commonly complained about to the CCTS and other Canadian complaint monitoring and handling agencies. A misleading advertised price, mandatory fees added to the advertised monthly price, inadequate information on the duration of the advertised promotional price, non-disclosure of the provider's option to change prices, discounts and credits, etc.: For several years, consumers have made many complaints against some providers' lack of transparency.

Our examination of the information available in promotional offers (with or without bundled services) in the online documentation of eight communications service providers has revealed numerous provider practices likely to hinder consumers' knowledge of essential information for making an informed decision.

We observe providers' strong tendency to offer limited-time discounts, although contracts are open-ended. Those offers are certainly interesting to consumers looking for savings, but also likely lead to surprise invoices if a discount's duration and the subsequent regular price are not disclosed adequately. But in several cases, that disclosure left a lot to be desired; the accent was almost entirely on the promotional price, never mind the details... From a marketing viewpoint, it's certainly logical to proceed in this way. However, the poor visibility of a service's regular price – although it will apply after the discount period expires – doesn't appear sufficient to guarantee that the consumer will be aware of it. That information is all the more important because the discussion group participants' experience confirmed to us the loyalty of many consumers, who have subscribed with the same provider for many years. The short promotional period thus represents a short time in the contract's life, and disclosure of all prices applicable during the rest of its life should be much more systematic. A consumer should not have to read a provider's entire Web page, particularly its footnotes, to understand how much a proposed package will cost him in six months.

Another concern is advertisements guaranteeing a discount – a new practice popular among the providers studied, and consisting of guaranteeing, not the advertised promotional price, but rather the maintenance, during rate changes, of a difference between the regular price and the actual price charged. The absence of a simple and easily understandable explanation in the offers studied is disturbing to us. A consumer (who, we should keep in mind, is not always a legal expert) risks having a false sense of security when seeing the advertisement of a low price and a discount guarantee; and he will have a nasty surprise at subsequent rate hikes when the subtlety of that "guaranteed discount" is explained to him.

Another serious problem surely concerns the disclosure of information about fees that will be added to the advertised price. They're numerous at times, and make a provider's

advertised price poorly representative of the actual cost a consumer will have to bear. The lack of uniformity between providers in the presentation of those fees certainly doesn't help the consumer evaluate and compare offers: fees scattered all over providers' Web pages, in disclaimers or footnotes, in multiple tabs. Before even making the many necessary calculations for evaluating the real offer, a consumer must find all the information relevant to the calculations and understand them, a laborious task even for the authors of the present study. To recall the comment by a discussion group participant: We're not very far from the (impossible) missions of Indiana Jones!

Beyond how the fees are disclosed, we can question the purpose of all those fees added to the advertised price. They generally pertain to the equipment necessary to consume the services offered, but it can be acquired in various ways. That situation presents serious challenges to providers in terms of presenting information. However, it's not an excuse for tolerating their practices in this regard. At the very least, if equipment is mandatory, a mention to that effect should appear directly beside the advertised price, as should the acquisition options and their costs, which should be clearly visible. Similarly, when equipment rental is mandatory and constitutes the only option for consumers, its cost should always be included directly in the advertised price, since the equipment and service are inseparable.

Apart from the price, are consumers adequately informed of the other essential elements of contracts they are prepared to enter into? That remains difficult to determine, because rare are the offers for which we could be sure to have all the relevant information, even after a detailed reading. Instead we generally find numerous hyperlinks, references to several other documents, and particularly vague mentions granting providers an enormous margin of manoeuvre.

Even when the information is disclosed effectively, it's commonly presented in disclaimers, which consumers are often unlikely to read. The providers studied ignored almost systematically the Competition Bureau's guidelines for disclaimers' acceptable use: the disclaimers are hardly visible, often concealed at the bottom of a Web page far from the main indications, of which they often radically change the meaning.

Here then is the main finding of our field survey. Promotions often don't present consumers with information about communications services in a manner that adequately informs them about all the essential elements of a contract, particularly about the actual cost of services offered.

The discussion groups have confirmed the trend observed at the CCTS and in our field survey: They find the promotional information complex, and most have had nasty surprises when receiving a provider's invoice after signing a subscription agreement. The participants no longer believe the prices advertised by providers and strongly distrust their promotional documentation. And yet, they badly need it: They don't read their contract – and often are unaware of its existence –, they don't always understand their invoices and don't pay much attention to them. The promotional documentation thus becomes an essential source of information for the customer to understand his package or bundle, particularly its cost, before committing to it.

The participants' discussions revealed all the importance of ensuring full price disclosure, particularly with tempting promotional offers. Pricing is by far the most important aspect for

consumers looking for communications services, the prices of which are most often considered excessive. Consumers want more transparency and to easily know the full price of offers, without having to make multiple additions of fees, credits, promotional or regular prices. In that sense, their expectations may seem very simple. However, a serious problem is observed in discussion groups regarding providers' disclosure of information, and it's difficult to see a solution to that problem.

Although they say they want more information and explanations from providers, consumers don't want to spend more time reading promotional documentation. They want a quick shopping experience, which precludes reading long documents, even in plain language. Those texts discourage and repel them, despite their demand for more information.

What conclusion can we draw from those discussions? There is no miracle solution to consumers' needs – and paradoxes. Clear and well presented information can certainly be beneficial for the consumer. But a regulatory or legislative approach focused exclusively on disclosure of information, to ensure the latter is accessible, is probably insufficient for guaranteeing that consumers will make an informed decision. Even in its simplest expression, the information will remain complex in certain cases and require consumers to make more of an effort, which they don't appear disposed to do.

In this context, what can be said about the current federal and provincial legal framework for providers' representations? Are the protection measures sufficient for ensuring that consumers have all the precontractual information they find important and truly need for making informed decisions?

At first sight, consumer protection laws and the *Competition Act* appear to offer a solid legal framework: prohibition against false or misleading representations or omissions of material facts, obligation to advertise a service's full price, etc. The laws generally provide prohibitions rather than positive disclosure requirements. Drafting those prohibitions in broad terms is both positive and negative: it covers more problematic situations, but can make it difficult to determine the application in specific factual situations. The government agencies refused to address this issue during our survey.

Without the industry standardizing, in accordance with legislative obligations and prohibitions, the presentations of prices, services, options, packages and bundles, we think the regulatory authorities could mitigate that difficulty by producing interpretation guides or guidelines. For example, a guide distributed by the Office de protection du consommateur (and other provincial agencies) for price advertisements that would comply with the *CPA* regarding communications services, while taking market realities into account (currently required equipment, various ways of acquiring equipment, service packages and bundles, etc.) would describe exemplary practices and those to be avoided. Likewise for the Competition Bureau, which already provides guidelines occasionally, but could certainly do more. Indeed, its guidelines for disclaimers in merchants' online information were very useful to us for assessing those disclaimers when we examined providers' documentation. Too bad they're not also useful to companies designing their promotional documentation.

Developing specific disclosure obligations, particularly regarding price advertisements and other fees, in regulations applying relevant laws – like the new regulation of price advertisements for air transportation services – could also prove an interesting path for

lawmakers. Like the development of guidelines, such regulatory measures would clarify the applicable legal framework rather than improve it or create a new one.

Whatever proposal is adopted, we think such measures would be necessary for clarifying and explaining to providers the significance of full information disclosure, particularly by using examples of exemplary practices and those to be avoided, and for preventing any provider from hiding behind “this legal ambiguity.”

Moreover, clarifying the rules in effect will not help and will remain theoretical without serious monitoring by the competent authorities and more-adequate recourses available to consumers.

It must be admitted that false representations (under all legislation) are viewed more as infractions than as justifications for new provisions giving consumers additional useful recourses. For such new provisions to have any effect, infractions must likely result in a penalty, and that risk must be sufficiently high for the provisions to produce the desired coercive effect. But current undertakings and interventions by the Competition Bureau and provincial consumer protection agencies are toothless concerning the representations of communications service providers. While CCTS statistics are unequivocal about the problem’s magnitude, those authorities nab providers for their misleading representations only occasionally – presumably because of a lack of resources or the high burden of proof. And yet, the whole industry flagrantly defies the law.

In addition, why issue guidelines for the online disclaimers of merchants whose infractions entail no intervention by the Competition Bureau? As for the CRTC, it rarely, if ever, penalizes providers, even though observance of the Codes of Conduct is a providers’ service requirement. Concrete actions by those authorities would more likely encourage – or compel – providers to adopt disclosure practices that would be more transparent and better meet consumer needs.

Another reason for providers’ impunity surely resides in consumers’ lack of useful recourses against some providers’ misleading representations. Although very laborious for consumers engaging in a legal or mediation process, in many cases for the first time, exercising individual recourses risks having little effect on a provider’s future behaviour. Rulings create no precedents at the CCTS or at Small Claims Court, and the result of such lawsuits is rarely known to the public.

Moreover, in the absence of a contract, exercising an individual recourse against a provider that has made illegal representations proves almost impossible. Individual recourses cannot constitute a real path for leading providers to change their problematic disclosure practices.

Of course, class actions are, in theory, more likely to induce behaviour changes than individual recourses exercised by a few consumers. However, class actions sometimes don’t actually lead to change. In reality, the time between initiating a class action and seeing its conclusion is generally long enough for practices to change on a few occasions in the meantime.

In addition, the severe limitation of individual recourses regarding precontractual representations also applies to class actions – only consumers who have signed a contract

with the provider in the wake of false representations can be compensated. And yet, is not consumers' collective interest also affected when a provider makes false representations? Since that collective interest is not effectively compensated by class actions, and since consumers exercising individual recourses can't be required to defend the collective interest, we think the public authorities should impose penalties when an industry or its members act against the interests of all consumers.

Recommendations

Whereas the number of complaints made by consumers about their communications service provider's disclosure of material information continues to increase;

Whereas our discussion groups revealed that:

- Consumers don't generally read their communications service contract;
- Consumers have difficulty understanding communications service invoices and pay little attention to them;
- Consumers have difficulty understanding providers' offers and/or be fully aware of them;
- Consumers attach enormous importance to the price advertised in providers' offers;
- Consumers want to have easy access to the "full price" in providers' offers;
- Consumers pay little attention to disclaimers in providers' offers and severely criticize the use of those disclaimers;
- Consumers want more transparency from providers in promotional documentation;

Whereas the promotional documentation of communications service providers is an essential source of information for consumers' understanding of the package or bundle proposed to them;

Whereas the consumer will be correctly informed only if the information provided to him is accurate, exhaustive and clear;

Whereas the information provided to consumers about communications services, in promotions, are not always presented in a way that informs them adequately of all the essential elements of a contract;

Whereas prices advertised in the offers of communications service providers are too often poorly representative of the actual total cost a consumer will have to pay;

Whereas a federal and/or provincial legal framework already exists:

- For price disclosure;
- For false and misleading representations;
- For the omission of material facts in representations;

Whereas consumer information remains problematic, despite that legal framework;

Whereas clear guidelines and provisions for precontractual information disclosure would likely ensure that consumers have information that is more complete and adequate;

Whereas the individual recourses that laws make available to consumers regarding misleading representations appear difficult to use in this context and not very likely to induce market players to change their practices;

Whereas the reprehensible practices of communications service providers in terms of precontractual information affect the market as well as all consumers;

Whereas the public authorities are responsible for imposing penalties when an industry or its members act against consumers' collective interest;

Union des consommateurs recommends that government consumer protection agencies and the Competition Bureau:

1. Produce and issue guidelines and/or interpretation guides regarding rules for disclosing information to consumers and regarding prohibitions against misleading representations, in order to clarify notably what would constitute non-misleading information and/or adequate disclosure of information in the context of a communications service offer;
2. Regularly update those guidelines and/or guides so they adapt quickly to any new disclosure practices by providers;
3. Better monitor offers and precontractual representations on the communications services market to ensure compliance with the spirit and letter of the law;
4. Use the legal authorities' coercive powers to penalize non-compliant providers and ensure that the precedence of the legal authorities' rules of interpretation is confirmed;

Union des consommateurs recommends that provincial lawmakers and governments:

5. Include, in provincial consumer protection laws or regulations, specific precontractual information requirements regarding essential information in communications service offers;
To that end, provincial lawmakers and governments are invited to use as models the following existing legal frameworks:
 - Regarding price disclosure: regulations for the advertisement of air transportation prices, under the *Air Transportation Regulations*;
 - Regarding disclosure of material information: rules for disclosing information before conclusion of a distance contract, under the *Consumer Protection Act*;
6. Grant adequate funding and resources to agencies responsible for monitoring the application of consumer protection laws, so that those agencies may better monitor precontractual offers and representations

on the communications services market, ensure compliance with the spirit and letter of the law regarding precontractual information, and use their coercive powers when that is not the case;

Whereas communications services are now considered essential services;

Whereas communications services constitute a more and more important expenditure item for consumers and represent a particularly heavy economic burden for some categories of consumers;

Whereas consumers have a lot of interest in offers that include discounts;

Whereas providers use methods for disclosing prices or discounts with terms or limitations of which consumers risk not understanding the subtlety, or which omit certain material facts, such as:

- 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;
- Announcing the possibility of increasing the price despite the discount guarantee;
- Advertising a price that will apply only if the service is bundled with another;
- Flagrant lack of explanations about required equipment and related fees;
- Prevalence of vague mentions such as: “other conditions apply” without an explanation or a specific reference;

Whereas several information dissemination practices in providers’ offers limit consumers’ ability to learn all the material information and make informed choices, such as:

- Mentioning, in multiple tabs never opened at the outset and with often unclear headings, fees that will be added to the advertised price;
- Mentioning fees and/or other essential information for evaluating the price, in disclaimers that are not very visible, with nondescript titles, and which the consumer must open to learn certain terms of the offer;
- Offering bundled services without detailing the individual price of each included service;
- Inserting many hyperlinks to external documents or other Web pages containing some of the offer’s terms;

Whereas current provider disclosure practices require that consumers be proactive to learn the essential information for evaluating the price of offers, notably regarding fees that will be charged beyond the advertised price;

Whereas the consumer doesn't necessarily have the willingness and/or ability (time, knowledge, etc.) necessary for making a detailed analysis of the offers;

Whereas the consumer should not be imposed the obligation to perform a detailed analysis of offers to know certain important aspects of them;

Whereas a certain standardization of information presentation methods in communications service providers would benefit consumers and facilitate competition;

Union des consommateurs recommends that the service providers:

7. Ensure that the consumer can understand – at first reading – the information offered to him and the offers' essential terms, and that the general impression of those offers not be misleading;
8. Group in the same location all the offer's cost information and present it prominently on that offer's main page, to give consumers easy access to relevant details for evaluating the price and to make it less likely they will receive a surprise invoice;
In that vein, providers could, for example, integrate a "price" block in the offers' initial presentation, as is often done for other information (e.g.: savings calculation).
9. Always advertise the full price a consumer will have to pay in order to benefit from the service offered;
 - 9.1. In cases where equipment rental is mandatory and is the consumer's only option for benefiting from the service, always include the rental cost in the advertised price;
 - 9.2. In cases where equipment is mandatory, but several acquisition options exist, indicate, near the price and in a highly visible and clear manner, the equipment's mandatory use, the possible acquisition options and their respective costs;

Union des consommateurs recommends that the Canadian Radio-television and Telecommunications Commission:

- 10.** Consider including, in the service conditions of communications service providers, rules for information disclosure before conclusion of a contract.

Mediagraphy

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Annex 1 Report by Substance Stratégies



Présenté le
12 février 2017

union
des consommateurs

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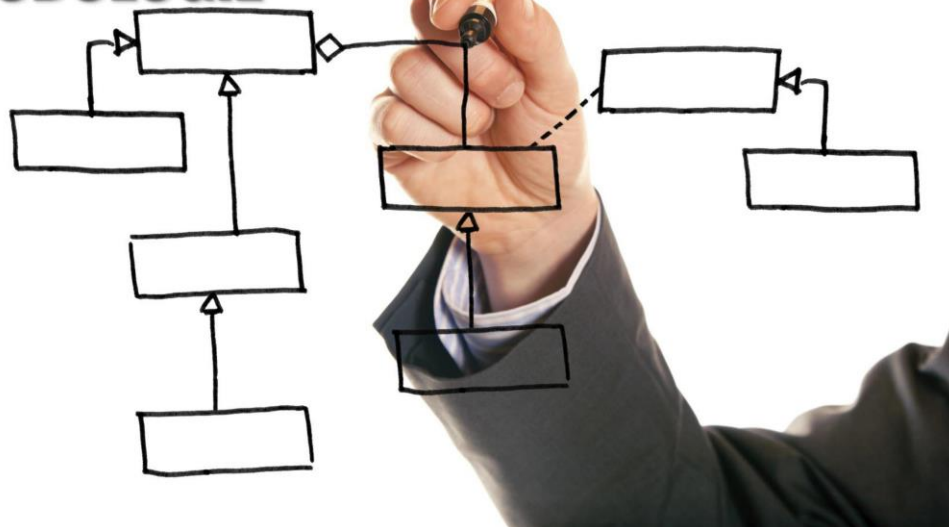
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Annexes



Le délicat sujet de la tarification

- L'immense majorité des consommateurs canadiens font affaire avec au moins un fournisseur de services de communication, que ce soit au plan d'Internet, de la téléphonie résidentielle, de la téléphonie cellulaire ou de la télédistribution.
- Des critiques sont émises quant à la présentation de la tarification dans les documents promotionnels (analogiques et numériques). Il y aurait en effet bien souvent un décalage entre le prix annoncé et le prix exigé.
- C'est dans ce contexte que Substance stratégies a été mandatée afin de réaliser une série de groupes de discussion à Toronto et Montréal auprès de consommateurs abonnés à deux services de communication ou plus. Le présent rapport recense les principaux constats de cette phase qualitative.

MÉTHODOLOGIE



Méthodologie



Méthode de collecte

4 groupes de discussion dans les marchés de Montréal et de Toronto



Groupe cible

Consommateurs abonnés à au moins deux services de communication ne travaillant pas pour un fournisseur du domaine, en recherche marketing, en droit ou dans les médias.

25 à 59 ans



Nombre de participants par groupe

Entre 8 et 10



Durée des groupes

Environ 120 minutes

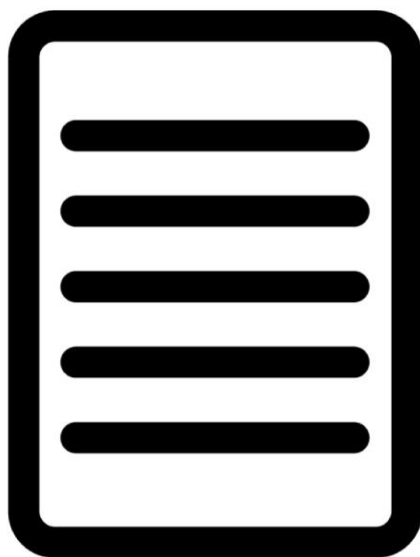


Dates des groupes

30 janvier 2018 à Montréal (2 groupes)
1^{er} février 2018 à Toronto (2 groupes)



Les commentaires recueillis dans le cadre de groupes de discussion contribuent à mieux cerner un phénomène et permettent de mieux comprendre certaines réalités plus subtiles. De plus, on ne peut prétendre à la généralisation ou à la représentativité statistique de ceux-ci.



SOMMAIRE EXÉCUTIF

En 10 temps

- 1 Cynisme:** Les consommateurs sont relativement critiques vis-à-vis de l'industrie et particulièrement envers ses joueurs les plus importants. L'attachement envers les marques est moyen à Montréal et minimal à Toronto, où les critiques sont plus vives.
- 2 Groupé:** Les services groupés sont très répandus, particulièrement chez les consommateurs plus âgés. Ainsi, la plupart des participants ont le même fournisseur depuis plusieurs années. La téléphonie mobile est le service qui échappe le plus souvent à cette tendance.
- 3 Frustration:** Les consommateurs se sentent souvent tenus pour acquis et se désolent du fait que les fournisseurs investissent beaucoup plus dans l'acquisition de nouvelle clientèle (par l'entremise d'offres agressives) que dans la valorisation de la fidélité.
- 4 Cherté:** Les consommateurs ont l'impression de payer trop cher pour leurs services de communication. Certains croient d'ailleurs que les fournisseurs ont une politique très similaire en ce qui a trait à la tarification, au point où quelques-uns perçoivent de la collusion.

substance stratégies | 8

En 10 temps

- 5 **Prix:** La primauté du prix est assez manifeste lorsque les gens recherchent de l'information sur les services. D'ailleurs, certains avouent carrément «magasiner un prix». Dans la majorité des cas, le processus de magasinage est relativement court. La recherche active d'information est plutôt minimale et se limite essentiellement aux sites web des fournisseurs.
- 6 **Écart:** La plupart des consommateurs savent que les prix annoncés ne correspondent pas aux prix exigés. Cet écart leur apparaît souvent comme étant frustrant. Cela dit, il existe une perception voulant que tous les joueurs de l'industrie aient adopté une telle pratique.
- 7 **Inertie:** Bien souvent, seule une offre agressive de la concurrence semble stimuler le passage à l'action. Plusieurs participants perçoivent un changement potentiel de fournisseur comme étant compliqué et cher.

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En 10 temps

- 8 **Rébarbatif:** Les documents promotionnels présentés aux participants ne soulèvent généralement que très peu d'intérêt. En fait, les consommateurs se servent bien souvent du prix comme critère de sélection et font confiance aux représentants du service à la clientèle pour leur expliquer les grandes lignes des services auxquels ils s'abonnent.
- 9 **Encadrement:** Il existe une vive impression d'opacité en ce qui a trait à la tarification et aux frais supplémentaires pouvant être facturés sans préavis. Les participants, particulièrement à Toronto, affichent en effet une certaine volonté d'un plus grand encadrement sur le plan de la tarification des services de communication.
- 10 **Litige:** En cas de litige, la totalité des participants aurait tendance à régler ce dernier directement avec le fournisseur. Les organismes responsables de l'application des lois liées à la consommation sont favorablement perçus, mais on leur accorde une plus grande pertinence en ce qui a trait aux cas «plus graves» et on les associe aux délais de règlement assez longs.

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Des Torontois plus ouvertement critiques

De façon générale, les participants de Toronto se montrent beaucoup plus critiques envers les géants de l'industrie (principalement Bell et Rogers) que ceux de Montréal (envers Bell et Vidéotron).

Les principaux reproches leur étant adressés sont afférents aux tarifs jugés prohibitifs et au mauvais service à la clientèle. À ce titre, quelques consommateurs suggèrent que les grandes compagnies ont conservé une posture monopolistique dans leur façon de s'adresser à leur clientèle.

De plus, les participants de Toronto se désolent davantage que ceux de Montréal que leur fidélité à titre de clients ne soit pas davantage reconnue et récompensée.

Cela dit, ces plus grandes critiques ne se traduisent pas toujours en comportements conséquents, particulièrement chez les plus âgés. Les jeunes Torontois se montrent toutefois plus enclins à se tourner vers de plus petits fournisseurs.



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Les services groupés sont très répandus

La très grande majorité des participants ont des services groupés auprès d'un fournisseur principal. Le principal argument motivant ce choix est le fait de profiter de rabais «au volume».

Toutefois, en les questionnant sur le sujet, certains avouent qu'ils pourraient avoir un meilleur prix global en prenant le temps de bien s'informer sur les prix de différents fournisseurs et il admettent du même souffle qu'ils apprécient la notion de «guichet unique». Autrement dit, la simplicité perçue leur apparaît comme étant plus profitable que les économies potentielles qui pourraient résulter d'un tel exercice (qui, au demeurant, leur semble fastidieux).

Quelques participants soulignent par ailleurs le paradoxe de l'accumulation de services. En effet, ils sont convaincus que leur facture totale pourrait venir à augmenter s'ils délaissaient un service. Sans qu'ils l'admettent directement, on peut déduire que le fait de grouper plusieurs services auprès d'un seul fournisseur accroît la force d'inertie et, indirectement, leur captivité (ou leur fidélité) vis-à-vis de leur fournisseur principal.

Finalement, il convient de souligner qu'il existe un lien relativement fort entre le fait de regrouper ses services et la fidélité envers un fournisseur.



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Les jeunes connaissent davantage la présence des «petits joueurs»

Les jeunes participants, principalement à Toronto, affichent une profondeur de connaissance plus marquée vis-à-vis des plus petits joueurs de la catégorie. C'est principalement le cas des fournisseurs Internet et de téléphonie cellulaire. À Montréal, les plus jeunes sont au courant de la présence de plus petits joueurs, mais parviennent peu à en fournir les noms.

Par ailleurs, à Toronto, les jeunes participants se font presque un point d'honneur de ne pas faire affaire avec les géants Bell et Rogers pour leur service Internet. À ce sujet, soulignons que seuls deux participants sur neuf détenaient des services groupés dans ce groupe.

Ainsi le plus grand détachement vis-à-vis de Bell, Rogers et, dans une moindre mesure, Vidéotron, diminue le sentiment de cartel et de collusion sur le plan de la tarification.

Finalement, il convient de souligner que le service à la clientèle chez les plus petits fournisseurs est perçu positivement par les jeunes, tandis que les plus âgés émettent des doutes quant à sa disponibilité.



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Une impression d'être tenu pour acquis

De façon générale, les participants, peu importe leur âge et le marché, déplorent le fait que les fournisseurs de services de communication sont très agressifs dans l'acquisition de nouvelle clientèle, mais qu'ils ont peu tendance à récompenser la fidélité après l'échéance de la promotion initiale.

Ainsi, plusieurs ont le sentiment d'être tenus pour acquis par leurs fournisseurs, ce qui exacerbe leur cynisme. Cela dit, le cynisme est transversal à l'ensemble de l'industrie et il existe une forte impression que tous les fournisseurs agissent de la même façon, un peu à la manière d'un cartel. Cette frustration stimule donc très peu le passage à l'action et il existe une très grande force d'inertie chez les consommateurs (à plus forte raison lorsqu'ils sont abonnés à des services groupés, car le changement de fournisseur est perçu comme complexe et coûteux).



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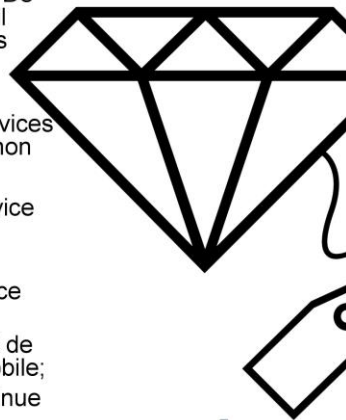
Une impression de cherté bien présente

De façon générale, les participants ont l'impression de payer relativement cher pour leurs services de communication. Plusieurs s'insurgent d'ailleurs de leur facture mensuelle (ou du cumul de leurs factures). De plus, aucun consommateur n'a spontanément émis l'impression qu'il bénéficiait d'une aubaine. La qualité des services est en effet parfois soulignée, mais leur rapport qualité-prix l'est beaucoup moins.

Par ailleurs, certains participants estiment que les consommateurs européens ou américains paient beaucoup moins cher pour des services de communication qui, à leurs yeux, sont tout aussi performants (sinon plus).

D'autre part, le service Internet résidentiel constitue souvent un service jugé trop cher par les participants. Trois phénomènes pourraient expliquer cette perception:

- L'accès à Internet est perçu comme étant désormais un service essentiel;
- La très grande majorité des participants ont accès à un forfait de données par l'entremise de leur fournisseur de téléphonie mobile;
- Finalement, la pluralité des réseaux WiFi publics gratuits diminue la valeur perçue de leur service Internet résidentiel.



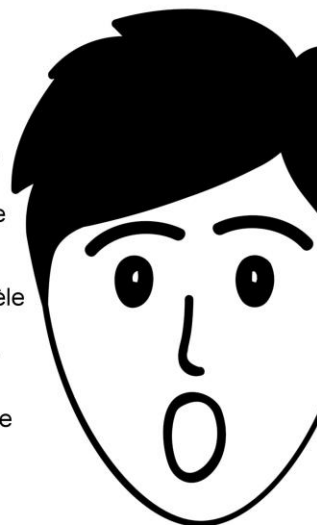
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Prix annoncé < prix exigé

Des participants affirment avoir déjà vécu une mauvaise surprise au moment de la réception de la facture, et ce, parfois dès la première facture. Cette situation semble assez universelle et transversale à l'ensemble des services de communication. Pour le reste, les opinions soulevées à cet égard sont multiples:

- Certains participants se choquent de telles disparités, tandis que d'autres haussent les épaules, marquant ainsi un certain dépit.
- Quelques participants évoquent les frais d'installation, qui sont souvent communiqués par le représentant du service à la clientèle et qu'ils perçoivent pour la plupart comme étant légitimes.
- Les frais de location des routeurs et des modems génèrent pour leur part beaucoup plus de surprise et de frustration.
- Finalement, ce qui génère le plus de mécontentement pourrait se résumer à: les frais d'annulation / résiliation et les oublis (que certains perçoivent comme volontaires) de créditer certains montants liés aux rabais.



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Les départements de rétention ou comment économiser

Le fait de contacter son fournisseur principal pour renégocier son tarif mensuel est une pratique vastement répandue chez les participants de Montréal. D'ailleurs, plusieurs peinent à camoufler leur fierté à ce sujet (au point où ils ont souvent l'impression d'avoir «déjoué le système»).

À ce sujet, ils admettent se servir des offres agressives de la concurrence en acquisition de clientèle pour renégocier leur tarif. Autrement dit, ils se servent des efforts en acquisition de la concurrence pour récompenser leur fidélité auprès de leurs fournisseurs actuels. Ils n'hésitent d'ailleurs pas à «menacer» d'aller chez la concurrence afin de parler au département de rétention.

Cela dit, les participants plus âgés de Toronto, à notre grande surprise, sont certains que de tels départements n'existent plus chez leurs fournisseurs et qu'il est dès lors impossible de renégocier la tarification de leurs services. Certains participants plus âgés sont même d'avis que cela est encadré par une nouvelle loi étant entrée en vigueur le 1er janvier 2018.



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Les factures génèrent peu d'intérêt et beaucoup de confusion

Les factures des fournisseurs de services de communication sont jugées difficiles à déchiffrer par une majorité de participants. C'est principalement le cas chez les participants plus âgés, moins technophiles ou qui ont plusieurs services auprès d'un même fournisseur.

À ce sujet, plusieurs consommateurs avouent ne pas regarder le détail de leur facture mensuelle si le montant à payer ne leur apparaît pas exceptionnellement élevé. Selon eux, le détail de leur facture est une succession de frais et de crédits dont ils ignorent souvent l'existence.

D'ailleurs, nous avons questionné les participants de Toronto de manière plus approfondie sur le sujet. La très grande majorité d'entre eux se montrent incapables de répartir leur montant total entre les différents services qu'ils reçoivent de leurs fournisseurs principaux. Autrement dit, le fait d'être abonné aux services groupés crée une certaine incompréhension sur la valeur des services, lorsque considérés individuellement.



substance strategies

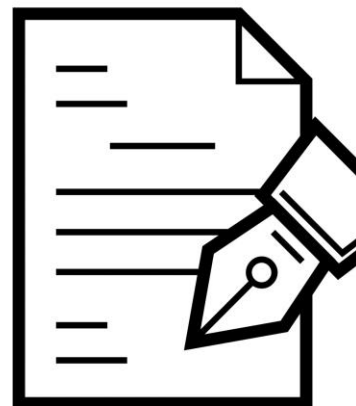
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Contrat ou pas: la grande inconnue

Lorsqu'on questionne les participants à savoir s'ils sont liés à un contrat avec leurs fournisseurs de services de communication, ceux-ci se montrent très hésitants, particulièrement à Montréal.

Le terme «contrat» semble générer une certaine confusion et plusieurs participants croient qu'ils ne sont pas liés par contrat parce qu'ils n'ont «rien signé». D'autres croient qu'il s'agit d'un contrat dit «moral». Pour ajouter à la confusion, certains sont d'avis que les contrats ne s'appliquent qu'à la téléphonie cellulaire, s'appuyant notamment sur les expressions «contrat de deux ans» ou «entente de deux ans».

Compte tenu de la confusion liée à la présence ou non de contrat, il ne faut pas se surprendre de la faible connaissance de leurs droits par les consommateurs.



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Très peu de sources sont consultées

La publicité constitue une source d'information importante des participants en lien avec les services de communication et les tarifs de ces derniers. À ce sujet, il est intéressant de constater la grande influence de la publicité télévisée.

L'étape suivante est dans la très vaste majorité des cas la visite du site web des fournisseurs, où les gens sont essentiellement à la recherche d'un prix.

D'ailleurs, à ce sujet, les gens ne font pas la distinction entre le fait de rechercher de l'information sur les prix, les services et les forfaits. Autrement dit, ils n'ont pas tendance à compartimenter leurs recherches de cette manière.

Dans tous les cas de figure, les gens n'ont pas le réflexe de glaner de l'information par l'entremise de sources tierces ou dites « objectives ». Cela dit, ils n'ont pas l'impression que ce type de sources existe réellement (à l'exception, peut-être, de Protégez-vous au Québec).



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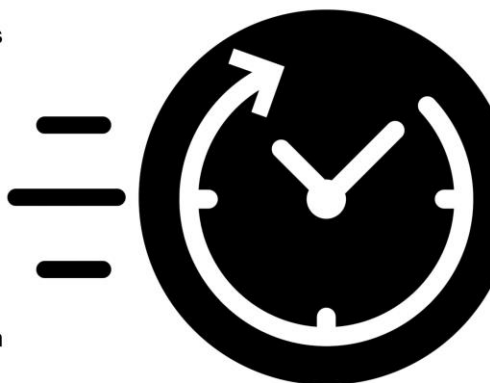
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Un processus de magasinage éclair

De leur propre aveu, les consommateurs ont plus ou moins tendance à établir un processus de magasinage complexe ou rigoureux lorsqu'ils ont besoin de services de communication. Cela s'explique notamment par...

- Une certaine impression de parité au plan de la qualité et des prix;
- Une lassitude à l'idée de contacter plusieurs fournisseurs;
- L'efficacité perçue ou la confiance inspirée par le bouche-à-oreille;
- L'historique personnel ou familial avec certains fournisseurs.

Compte tenu de ce court processus de magasinage, on peut déceler un intérêt tout relatif à l'égard de l'information délivrée par les fournisseurs de services.



substance strategies

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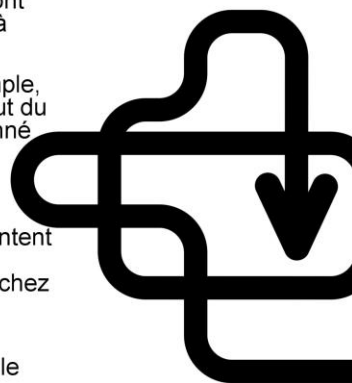
À chaque service son niveau de complexité

La discussion liée à la complexité de l'information inhérente aux différents services de communication pris individuellement demeure essentiellement théorique, dans la mesure où les offres groupées sont très répandues. Ainsi, les consommateurs ont davantage tendance à magasiner et, ultimement, à acheter, un «bundle».

Cela dit, la téléphonie résidentielle est perçue comme étant plus simple, car elle est perçue comme comportant moins d'options. À l'autre bout du spectre, la télédistribution comporte sa part de complexité, étant donné les bouquets de chaînes et les frais découlant des chaînes supplémentaires.

Pour sa part, le service Internet est jugé comme étant relativement complexe à évaluer en soi, mais la plupart des participants se contentent des appellations de type «haute vitesse». Cela dit, les références chiffrées relatives à la vitesse trouvent peu d'écho, particulièrement chez les plus âgés.

Finalement, les informations relatives à la téléphonie cellulaire sont jugées comme étant relativement simples, dans la mesure où la seule réelle préoccupation des consommateurs réside dans la quantité de données incluse dans le forfait.



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Les gens «magasinent un prix»

Nous avons été surpris de voir à quel point les consommateurs se contentent bien souvent de «magasiner un prix» et ne font que très peu de cas des modalités des services (la vitesse de téléchargement, par exemple). C'est particulièrement le cas du service Internet chez les plus âgés.

D'ailleurs, ils ne parviennent que très rarement à nommer un autre critère que le prix lorsqu'on les questionne sur les éléments les plus importants en termes d'information à propos des services de communication. Certains répondent «le service» de manière générique, mais ne peuvent pas réellement élaborer davantage.

Nous nous attendions à une plus grande complexité alors que dans les faits, les consommateurs affichent un certain détachement par rapport aux éléments non afférents aux prix.

La grande attention portée aux prix nous apparaît comme étant un constat majeur, dans la mesure où elle dramatise les écarts potentiels entre le prix annoncé et le prix exigé.



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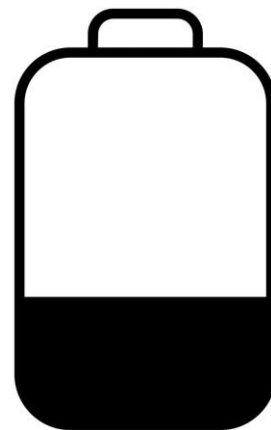
Les attentes sont basses

Au cours de la discussion, nous exposons les participants à différents documents promotionnels produits par des fournisseurs de services de communication (ils se trouvent en annexes).

L'objectif de la présente section est de dégager les principaux constats suite à cet exercice.

De manière générale, il convient de souligner que les participants abordent généralement cette documentation avec un certain cynisme. Ils s'attendent à des prix annoncés en promotion qui ne correspondent pas toujours aux prix exigés, à des petits caractères, à des conditions parfois restrictives, etc.

Autrement dit, ils semblent avoir internalisé les façons de faire de l'industrie et s'en remettent souvent davantage à la bonne foi de l'agent au service à la clientèle lorsqu'ils appellent pour s'abonner qu'à la documentation dite « officielle » des fournisseurs.



substance strategies

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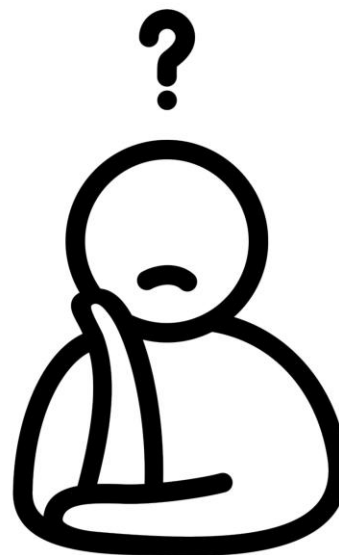
Le « branding » sème le doute

Il apparaît que le « branding » des différents services altère l'attention portée aux prix et affecte la capacité d'évaluer plus objectivement ces derniers.

Le simple fait de nommer un service avec un élément de *branding* (ex. « Zazeen Télé » chez Distributel) et d'apposer un superlatif diminue la clarté et la crédibilité perçues de l'information transmise par un fournisseur.

En fait, ces stratégies viendraient altérer la comparabilité des services entre eux et diminuent la qualité perçue de ces derniers. Aux yeux de quelques participants, un fournisseur qualifiant son service Internet de « Super » (toujours chez Distributel) mérite forcément leur méfiance.

Autrement dit, le fait de qualifier ou de nommer ses services dilue bien souvent la compréhension de l'information, particulièrement chez les plus petits joueurs.



substance strategies

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Les fameux petits caractères

Dès qu'un document informatif fait appel à des «petits caractères» (*fine print* en anglais), une majorité de consommateurs affichent une réaction qui exprime au mieux le découragement et, au pire, un certain dégoût. D'ailleurs, ils semblent éviter (consciemment ou non) ce type de contenu.

Le simple fait d'utiliser une telle pratique leur indique qu'ils vivront une certaine déception au fil de leur relation avec leur fournisseur. Cela leur suggère également que l'entreprise se dote de façon insidieuse de droits ou de prérogatives, tandis qu'ils ne seront tenus qu'à leurs devoirs à titre de consommateurs.

Par ailleurs, la réaction vis-à-vis de la forme (les petits caractères) est si vive que les consommateurs peinent à émettre une opinion sur son contenu. À ce sujet, plusieurs participants sont d'avis que les fournisseurs utilisent sciemment une forme rébarbative afin de leur imposer du contenu qui leur sera dans tous les cas désavantageux ou, à tout le moins, de nature limitative.

Lorsqu'on leur demande de lire attentivement les passages en question, plusieurs participants manifestent de vives réactions, notamment sur les changements sans préavis. Le passage stipulant que «les offres, les services et les tarifs sont modifiables sans préavis» du document de Vidéotron fait d'ailleurs réagir quelques participants.

Finalement, sur le plan du fond, les consommateurs affichent généralement une compréhension correcte de l'information, mais ont tendance à la percevoir comme étant du «jargon légal» et ont le réflexe de chercher les pièges potentiels.

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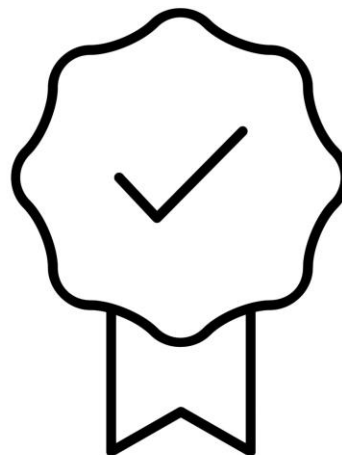


Quand la notoriété stimule la confiance

Bien que nous nous efforcions de ne pas discuter des marques en soi lors des séances, il apparaît évident que la notoriété de celles-ci a un effet très important sur la clarté perçue des pièces de communication (et, incidemment sur la confiance qu'elles inspirent).

À écouter parler les participants, on en vient à croire que la visibilité ou la familiarité avec une marque clarifie d'emblée l'information véhiculée. Autrement dit, le fait d'être présent sur le plan publicitaire suggère une certaine solidité et, par ricochet, une certaine confiance.

Par ailleurs, sans le déclarer directement, plusieurs consommateurs sont d'avis que des marques dites «populaires» (ou avec lesquelles plusieurs de leurs proches font affaire) ne peuvent forcément pas véhiculer d'information partielle et encore moins mensongère.



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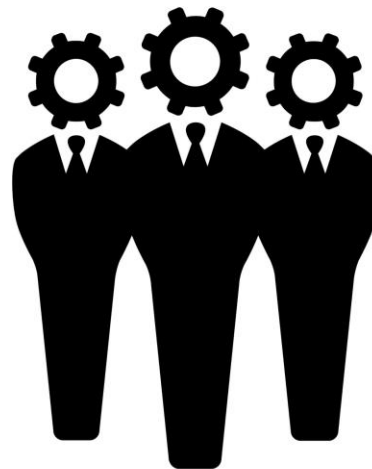
28

Point de trio, point de salut

Les stimuli présentant des services individuels (non groupés) tels que EBOX sont souvent jugés difficiles à évaluer par plusieurs participants, notamment les plus âgés.

La complexité perçue trouve davantage sa source dans la difficulté de comparer le prix avec sa propre facture mensuelle souvent de services groupés que dans l'information livrée à proprement parler.

Cela en dit long sur l'effet insidieux des services groupés: leur omniprésence rend difficile l'appréciation de la valeur individuelle de chaque service.



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Encore le prix, toujours le prix

Tel que mentionné auparavant, les participants sont unanimes sur le fait que le prix est l'élément le plus important lorsqu'ils recherchent de l'information sur des services de communication.

L'exercice d'analyse des documents promotionnels vient d'ailleurs appuyer ce constat.

En effet, plusieurs consommateurs ont tendance à baser leur appréciation globale du document sur la simple évaluation du prix qu'il met de l'avant. Cela dit, ils sont conscients que ce prix annoncé ne sera pas, dans la plupart des cas, celui qu'ils paieront suite à l'abonnement. Autrement dit, le prix déclaré constitue un «premier indice».

De façon spontanée, il est plutôt rare qu'ils soulignent le manque de clarté d'un document ou le caractère opaque de ce dernier. En revanche, ils ont bien souvent une opinion sur la tarification. Lorsqu'on les confronte au sujet de la clarté et qu'ils regardent les documents plus attentivement, plusieurs consommateurs se montrent moins confiants sur le plan de leur compréhension.

En fait, plusieurs participants adoptent un raisonnement qui pourrait ressembler à ce qui suit: *«Je vais appeler la compagnie si le prix me semble bon. Une fois en ligne, le service à la clientèle m'expliquera les détails du prix et des frais»*. Dans leur esprit, cela leur évite également de lire les passages contenant les «petits caractères».



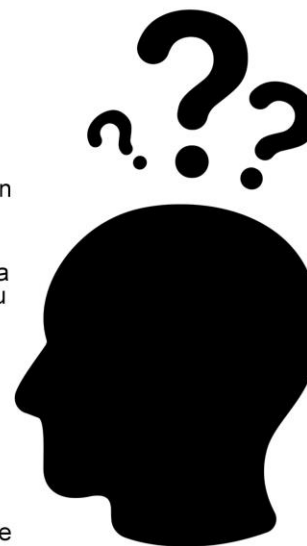
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Prix annoncé vs prix exigé: la confusion règne

Au moment de la consultation des documents, les discussions par rapport à l'affichage du prix permettent de dresser certains constats:

- De façon générale, les consommateurs sont conscients que le prix annoncé ne correspond pas au prix exigé. Ils ont l'impression qu'il s'agit d'une «norme de l'industrie»;
- La plupart sont convaincus que les rabais sont garantis. Cette certitude repose toutefois essentiellement sur leur expérience. La surprise est donc importante lorsqu'ils prennent connaissance du fait que les prix promotionnels sont sujets à des changements sans préavis;
- Les hausses de tarification ponctuelles et unilatérales irritent certains consommateurs, mais ceux-ci le mentionnent très rarement en regardant les stimuli, ce qui laisse croire qu'ils y pensent peu en situation réelle de magasinage.
- La plupart des participants affichent une incapacité à calculer combien il leur en coûterait réellement pour bénéficier des services proposés. En fait, ils ont tendance à l'estimer sur la base du montant qu'ils paient eux-mêmes en réalité.



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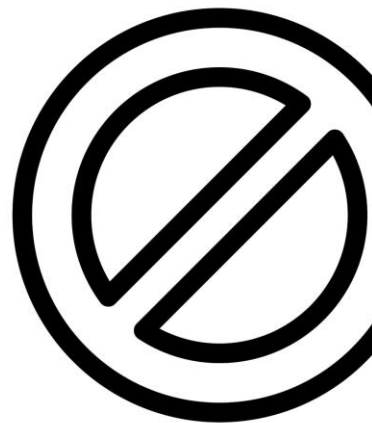
Les frais supplémentaires... ce qui est attendu

La divulgation des onglets présentant le détail des frais supplémentaires ou uniques crée parfois certaines réactions négatives, mais ne surprend réellement pas les participants, qui s'attendent à une telle pratique.

Le cas de EBOX génère toutefois plusieurs réactions négatives, dans la mesure où la divulgation de l'onglet «détails du prix» donne l'impression de gonfler grandement le prix perçu plutôt positivement au départ.

Par ailleurs, la présence de longs textes de nature légale apparaît comme aussi attendue que rébarbative. La présence d'un tableau chez Bell vient toutefois atténuer cette réaction.

Finalement, plusieurs participants affirment qu'ils liraient attentivement un tel onglet dans un contexte réel de magasinage. Or, ils ne se font pas tellement réellement convaincant à ce chapitre. Nous avons plutôt le sentiment qu'ils se fient essentiellement au service à la clientèle pour leur expliquer les restrictions liées à leur abonnement et les particularités de la tarification.



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Les «bonnes pratiques»

De façon générale, voici ce qui interpelle positivement les participants en ce qui a trait à la manière de présenter l'information sur les tarifs et services:

- Afficher clairement les prix;
- Indiquer le prix «régulier» ou «hors promotion», comme c'est le cas pour Primus. Les gens conçoivent qu'il s'agit d'une bonne pratique d'un point de vue consommateur, mais comprennent moins cette tactique d'un point de vue marketing;
- Utiliser le mode «faits saillants» (de l'anglais «point form») afin de limiter le nombre de mots;
- Faire appel à des colonnes afin de favoriser les comparaisons entre les forfaits;
- Décliner le prix total des forfaits par service (ce qui n'a pas été présenté dans tous les stimuli);
- Privilégier les tableaux aux textes.



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Ce qu'on ne doit pas faire

De façon générale, voici ce qui interpelle négativement les participants en ce qui a trait à la manière de présenter l'information sur les tarifs et services:

- Ne pas indiquer de prix;
- Apposer un superlatif à un service;
- Les mentions de type «sous réserve de modification», comme c'est le cas pour Vidéotron;
- L'absence de comparabilité entre les différentes options, services ou forfaits;
- Les approximations (telles que les mentions «jusqu'à 10 Mbit/s» chez Bell);
- L'abondance de données techniques ou de chiffres (particulièrement chez les plus âgés ou les moins technophiles).



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Les fournisseurs: juges et parties

Lorsque les consommateurs font face à un problème de changement de prix ou à un litige lié à leurs services de communication, leur premier réflexe consiste à contacter leurs fournisseurs, et ce, sans exception.

Plusieurs connaissent l'Office de la protection du consommateur au Québec ou son équivalent ontarien et la CPRST et en ont généralement une opinion favorable. Cela dit, ils perçoivent ces organisations comme étant des spécialistes des litiges majeurs et croient que le fait de faire appel à celles-ci engendrera un processus plutôt long et complexe.



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Pour un plus grand encadrement

Plusieurs participants affichent un désir d'une plus grande transparence de l'industrie en ce qui a trait à la tarification. Selon eux, le gouvernement devrait s'inspirer de la tarification des biens essentiels et de l'industrie de l'aviation pour améliorer les questions de transparence.

L'encadrement gouvernemental leur apparaît nécessaire pour que l'industrie acquière une plus grande habitude de communiquer de façon transparente, mais également parce que l'état actuel de la concurrence fait en sorte qu'aucun concurrent n'osera initier lui-même ce mouvement. À ce sujet, un participant de Toronto affirme à titre d'exemple que Bell pourrait profiter d'une arrivée massive de clientèle si Rogers décidait de communiquer ses prix de façon transparente.



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Méthodologie détaillée

- Cette étude a été réalisée par l'entremise de quatre groupes de discussion menés dans les marchés de Montréal (deux groupes le 30 janvier 2018) et de Toronto (deux groupes le 1^{er} février 2018).
- Chaque groupe a réuni entre 8 et 10 personnes. Pour être admissibles, les participants devaient être âgés de 25 à 59 ans et être abonnés à au moins deux services de communication parmi les suivants: télédistribution, Internet, téléphonie résidentielle et téléphonie cellulaire.
- Les participants ont chacun reçu 75\$ (Montréal) ou 85\$ (Toronto) en guise de remerciement pour leur participation.
- Les sessions ont duré entre 105 et 120 minutes et ont été enregistrées sur bandes audio et vidéo.
- Benoit Cyrenne, associé chez Substance stratégies, a animé les groupes.



Offre valeur Internet et téléphonie résidentielle numérique plus

- ✓ 100 minutes gratuites vers mobiles
- ✓ Appareils fixes illimités
- ✓ Garantie Satisfaction¹
- ✓ 24h/24 assistance client
- ✓ Garantie 30j
- ✓ 100% de satisfaction sur Garantie sans Engage.
- ✓ Tarif à l'usage sans engagement sur tous les fixes illimités
- ✓ 100% de satisfaction sur engagement téléphonique illimité offert mensuel

7 Mbit/s	16 Mbit/s	25 Mbit/s	50 Mbit/s
Garantie sans engagement sur 3 ans	Garantie sans engagement sur 3 ans	Garantie sans engagement sur 3 ans	Garantie sans engagement sur 3 ans
55,95 €² /mois 55,95 € sans engagement sur 3 ans	60,95 €² /mois 60,95 € sans engagement sur 3 ans	64,95 €² /mois 64,95 € sans engagement sur 3 ans	71,95 €² /mois 71,95 € sans engagement sur 3 ans
Plus de détails	Plus de détails	Plus de détails	Plus de détails

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Page 107

Exercice 1 : Vidéotron

The screenshot shows the Vidéotron website with a navigation bar at the top. The main content area is titled 'PROFITEZ DES ÉPREUVES SUR MESURE' and features three service packages: 'Internet 10 + Téléphone', 'Internet 20 + Téléphone', and 'Internet 30 + Téléphone'. Each package is displayed with a price tag (e.g., 99.95\$) and a list of features. The website has a clean, modern design with a white background and blue accents.

This screenshot shows a promotional banner on the Vidéotron website. The text reads 'POUR VOUS ABONNER OU POUR CRÉER VOTRE FORFAIT PERSONNALISÉ, PARLEZ À UN CONSEILLER.' Below this, there is a form for a phone number and a 'Parlez à un conseiller' button. The banner also features a large yellow button that says 'DONNEZ-LUI LA DEUXIÈME VIE QU'IL MÉRITE'.

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Exercice 2 : Primus

The screenshot shows the Primus website with a navigation bar. The main content area is titled 'Offre-valeur Internet 16 et téléphonie résidentielle numérique'. It features two service packages: 'Utilisation Illimitée' and '200 Go/Mois'. Each package is displayed with a price tag (e.g., 69.95\$/mois) and a list of features. The website has a clean, modern design with a white background and blue accents.

This screenshot shows a sidebar on the Primus website. It contains several sections: 'Services' (Offres spéciales, Internet, Téléphonie, Services à la clientèle), 'À Propos De Nous' (Notre histoire, Nos valeurs, Notre engagement), and 'Solutions' (Solutions pour les entreprises, Solutions pour les particuliers). The sidebar is designed to help users navigate the website and find the services they need.

This screenshot shows a comparison of service offers on the Primus website. It features two columns of offers, each with a price tag and a 'Commander' button. The offers are for 'Utilisation Illimitée' and '200 Go/Mois'. The website has a clean, modern design with a white background and blue accents.

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Exercice 2 : Vidéotron

The screenshots show the Vidéotron website interface. The main page features a navigation bar with 'Vidéotron', 'Magasins', 'Support', and 'Produits'. Below the navigation bar, there are several promotional banners and service packages. One prominent package is 'LA TOTALE + INTERNET 30' priced at 105.95\$. Another package is 'INTERNET FIBRE HYBRIDE 30' priced at 78.95\$. The website also displays various other services and their prices, such as 'LA TOTALE + INTERNET 100' for 120.95\$ and 'LA TOTALE + INTERNET 150' for 119.95\$. The bottom of the page includes a footer with contact information and a 'S' logo.

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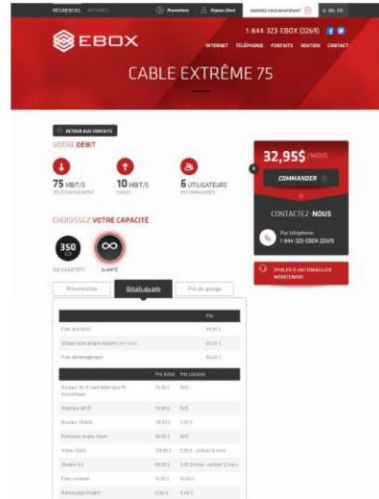
Exercice 2 : Bell

The screenshots show the Bell website interface. The main page features a navigation bar with 'Bell', 'Magasins', 'Support', and 'Produits'. Below the navigation bar, there are several promotional banners and service packages. One prominent package is 'Fibre' with a price of 32.95\$. Another package is 'Fibre TV' with a price of 32.95\$. The website also displays various other services and their prices, such as 'Fibre TV' for 32.95\$ and 'Fibre TV' for 32.95\$. The bottom of the page includes a footer with contact information and a 'S' logo.

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Exercice 2 : EBOX



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STIMULER

LA CONNAISSANCE

LES INTERACTIONS

LES RÉSULTATS

Annex 2 Summary of Highlights

This summary presents the highlights of our study, which examines the clarity, exhaustiveness and accuracy of promotional information disclosed to consumers by communications service providers, notably regarding prices and discounts, one-time and recurring fees that may be added to advertised prices, and the conditions attached to promotions.

- Highlights of the analysis of promotional documentation (3p)
- Highlights of discussion groups (2p)

Highlights of the analysis of promotional documentation

Methodological summary

We collected information on promotional offers (with and without service bundles) in the online documentation of eight communications service providers¹⁵⁹. The documents collected were examined to assess the exhaustiveness and clarity of precontractual information – particularly regarding prices, fees and discounts – and to verify the presence of all essential information for consumers to make informed choices.

General findings

Presentation of prices and discounts

1. The monthly discounts offered to consumers were often substantial, particularly in the promotional offers of major providers (discount of \$20-30/month, at times of over \$50/month) – thus the importance of ensuring that consumers have an adequate understanding of the terms of such promotions.
2. The majority of the providers we studied offered **limited-time discounts** (3 to 12 months), although the contracts offered generally had unlimited duration. In several cases, that limit wasn't easily visible to the consumer: three providers did not expressly announce, near the regular contract price, how long the reduced price would apply. That information was instead provided in a disclaimer, visible only if the consumer clicked on its title (see parag. 9).

¹⁵⁹ The telecommunications service providers whose promotional offers we analysed in the course of this study are: Bell, Rogers, Telus and Videotron (major providers) and Primus, Teksavvy, Distributel and Ebox (independent providers).

3. We noticed the popularity of mentions similar to “guaranteed monthly savings of \$x” in the offers of major providers. This tells us that if the price is hiked, the promotional discount price could be increased, so long as the advertised (and guaranteed) difference in percentage was maintained with the new regular price¹⁶⁰. The transparency of that **discount rather than price guarantee** varied substantially depending on the providers: the explanations were found at times only in footnotes, referred to by an asterisk near the discount price advertised in bold.
4. We also noted the popularity of **bundled service discounts** advertised in a manner that was challenging to consumers. For example:
 - a. Only one provider mentioned both the **price of each service** included in its bundles and the bundle discount. In the other cases, the consumer himself had to search for the prices of individual services and make the necessary calculations to determine the amount of the discount for each service. It should also be noted that bundled services were presented essentially in the same manner, whether or not there was a discount related to the bundle.
 - b. In their offers of **individual services**, three providers advertised prices that included at the start a service bundle discount – it was thus impossible to know the individual services’ prices. The “clarification” appeared in fine print under the advertised price, in the more detailed presentation of the offer or in a disclaimer window distinct from the offer’s main page.
5. Given the multiple applicable fees, the prices advertised in the providers’ offers **rarely reflected the total amounts** that the consumer would spend to obtain the service.

Presentation of fees

6. We observed that all one-time fees (activation, installation, SIM card, etc.) and recurring fees (modem rental, recorder, dry loop, etc.) added to prices advertised in the offers were **rarely visible on the offer’s main Web page**:
 - a. Four providers mentioned those fees in one or more tabs that the consumer had to open and where the headings’ clarity varied greatly (“details of the offer,” “DSL only,” “other fees,” etc.);
 - b. Two providers mentioned fees only in the offer’s footnotes;

¹⁶⁰ We contacted the customer service representatives of two of the providers that have adopted such a practice, in order to confirm our interpretation.

- c. One provider mentioned the installation fee directly beside the price advertised. Curiously, the equipment rental fee was mentioned only in a disclaimer the consumer had to open.
- 7. At times it was difficult to identify the fees, notably because there was no explanation as to which equipment had to be purchased or rented (e.g. modem, dry loop) and as to how the total fees applied to which products, packages or services.

The use of disclaimers

We also observe the widespread use, particularly in major providers' offers, of a type of disclaimers, defined by the Competition Bureau as "Disclaimers, the less conspicuous, fine print elements of advertisements, [are] often used to add information or clarifications that are not integrated into the design of the main body¹⁶¹." Generally, we observe the following:

- 8. **Content of advertisements:** the disclaimers' information went far beyond a simple clarification of the offer's main text:
 - a. Presence, in most cases, of essential information for the consumer to evaluate the amounts he will have to spend during the term of the contract – **amounts frequently exceeding the advertised price**: fees for installation, set-up, rental or purchase of necessary equipment, explanations about the limited application period of the discount, about the discount guarantee, etc.;
 - b. Widespread presence of several **vague and unexplained mentions**: "other conditions apply," "additional terms may apply," etc.;
 - c. Presence of **hyperlinks** to providers' "legal sections" leading in turn to many provider agreements and policies (e.g.: AUP).
- 9. **Visibility of disclaimers:** the consumer must often be vigilant and take the initiative in order to view the disclaimers:
 - a. In the majority of cases, disclaimers were presented in the form of "**accordion texts**" the consumer can expand vertically by clicking on the heading. It should be noted that in no case was the text "expanded" at the start. Those accordion texts were not very visible: fine-print headings, colours not standing out from the rest of

¹⁶¹ The Competition Bureau published guidelines in 2009 to determine whether an online advertisement suffices to change the general impression created by the main indication:

http://publications.gc.ca/collections/collection_2010/ic/lu54-1-2009-fra.pdf

a Web page, location at the bottom of the page, and at times even a separation from the main offer by advertisements for other provider services.

- b. In other cases, the disclaimers were presented in a **modal window** (internal pop-up) the consumer had to open by clicking on a heading, generally near the advertised price.
- c. There were few **visual clues** alerting the consumer about a disclaimer: usually limited to a small asterisk (in the same or another colour) near the advertised price or even in the offer's overall presentation. In addition, it was generally impossible to access the disclaimer by clicking directly on the asterisk.
- d. The headings given to the advertisements did signal that there could be important information, but referred to no specific fact: "terms of the offer," "see all the details" or "terms and conditions."

Highlights of the discussion groups

Methodological summary

In collaboration with a specialized firm, we held 4 discussion groups in Montreal and Toronto among consumers subscribing to communications services. We surveyed the participants on their needs and expectations regarding precontractual information and presented to them a sample of the promotional documents collected, to obtain the participants' views on the documentation's clarity and exhaustiveness and their understanding of the information offered.

General findings

1. The perception of the shopping experience with communications services was generally negative among participants, most of whom have been dealing with the same main provider for many years (except for wireless services).
2. The participants' shopping experience with communications services is relatively simple and short; focused on the **search for a "good price"** with very little reference to terms of service (download speed, for example).
3. The participants are **distrustful of promotional information**; almost all said the advertised price was lower than the one they were charged in the end. Several mentioned having had a nasty surprise when they received invoices: a surprise

activation fee, equipment purchase or rental, the end of a discount they didn't know had a limited duration, etc.

During the presentation of promotional documents

4. Despite expressing doubts about the advertised price, the participants appeared to have little interest in reading the provided documentation. Most of them **reported or assumed their inability to identify, on the basis of those documents, how much it would actually cost them** to benefit from the services offered.
5. The non-inclusion of certain fees in the advertised price, and their disclosure in fine print or in distinct tabs, annoyed the participants (although they weren't surprised). In reaction, they expressed a desire to obtain a "full price" at the start.
6. **The fine print** or footnotes (disclaimers) in providers' promotional documents discouraged the participants, who found such content "unfavourable" or "misleading" before even reading it. Indeed, the participants seemed to avoid (consciously or not) reading that content, even when required; they relied instead on an overview of paragraphs to search for "traps." Faced with those boring and arduous texts, they preferred shorter texts, a summary table or bullet points.
7. The participants prefer to contact a provider's customer service to obtain further information rather than read all the promotional documentation, particularly the parts in fine print.
8. Several participants want **stricter regulation of providers' promotional information** because they doubt the providers' willingness or (competitive) interest in being more transparent.
9. When problems arise, the participants report contacting their service provider. Some know about the Quebec and Ontario consumer protection agencies and the CCTS, but seemed to think the organizations were more concerned with matters "of greater importance."

General comment

We observe a certain incoherence in the words and actions of the discussion group participants. On one hand, they say they want more information, explanations and nuances, when necessary, in the providers' promotional documentation to avoid nasty surprises when receiving an invoice or using services. On the other hand, they were very reluctant to read the promotional documentation, were quickly discouraged in the presence of longer and more complex texts, and candidly admitted wanting a speedy shopping experience.

Annex 3 Questionnaire to Government Agencies

Research Project Funded by the Office of Consumer Affairs

(Innovation, Science and Economic Development Canada)

April 2018

QUESTIONNAIRE

Presentation of the organization

Union des consommateurs is a non-profit organization that comprises 13 consumer rights groups. UC's mission is to represent and defend consumers, with special emphasis on the interests of low-income households.

UC acts mainly at the national level, before political, regulatory or legal authorities, in public forums, or in class actions. Its priority issues, for research, action and advocacy, include the following: household finances and money management, energy, issues regarding telephone services, broadcasting, cable television and the Internet, public health, financial products and services, and social and fiscal policies.

Presentation of the project

Our research project, titled ***Discounts at what cost? Communications services and promotional pricing: a closer look***, examines the clarity, exhaustiveness and accuracy of promotional information disclosed to consumers by communications service providers, notably regarding prices and discounts, one-time and recurring fees that may be added to advertised prices, and the conditions attached to promotions. Do consumers have the necessary and adequate information to make informed choices?

Our research includes an analysis of the promotional documentation of eight Quebec and Ontario providers (four main providers and four independent providers) as well as discussion groups. Here enclosed is a summary of the highlights of that research, along with a short questionnaire exploring the viewpoints of the industry and of government consumer-protection organizations.

N.B. This research is not intended to put any provider on trial. Its purpose is simply to draw a portrait of current practices regarding the disclosure of essential information in promotional documentation, and to make relevant recommendations, where necessary.

Identification of your organization

Name of the organization:

Address:

Resource person:

Position and occupation:

E-mail:

Questions

1. Do you have any comments about the preliminary findings of our research?
2. What do you think about the “incoherence” we observed between the words and the actions of discussion group participants? Do you see a solution?

To answer this question, please refer to the section “General comment” at the bottom of page 5 of the attached document titled “Summary of Highlights.”

Regarding consumer complaints

Year after year, the CCTS deplores the high rate of complaints it receives for “**non-disclosure or misleading disclosure of terms**” and reminds providers to disclose important information clearly and correctly to consumers.

According to the Commission’s latest quarterly report, consumers raised the problem 1,897 times between September 2017 and January 2018, and it’s the problem most complained about (almost 15% of all problems raised).

3. In your view, what explains the high percentage of complaints received by the CCTS about non-disclosure or misleading disclosure of information?

4. Does your organization receive complaints or information requests from consumers regarding promotional information (misleading, incomplete, etc.) from communications service providers, or regarding the disclosure (or non-disclosure) of essential elements of contracts with communications service providers?
5. What types of advice or information do you offer consumers on this subject (possible approaches, available recourses, applicable laws and proceedings, etc.)?

Regarding certain provider practices

To complete this section, please refer to the attached document titled “Summary of Highlights.”

In the course of our field survey, we observed that several providers guaranteed a discount and not a fixed price to consumers, by including in their promotional document a mention such as: “guaranteed savings of \$x per month.”

6. In your view, what are the advantages and disadvantages of such a practice for providers and consumers?
 - a. Advantages for providers:
 - b. Disadvantages for providers:
 - c. Advantages for consumers:
 - d. Disadvantages for consumers:
7. Do you think consumers are able to understand the meaning of such a mention and its potential impact on the price of their subscription during the term of the contract?

In the course of our field survey, we also observed that a single provider presented, in its offers, a limited-time promotional price in smaller characters than the regular price of its packages.

The discussion group participants found that practice particularly transparent.

- 10(a) In your view, what would be the advantages of attaching more importance to the regular price than the promotional price when that discount applies only for a limited time (a shorter time than the term of the contract in the case of a fixed-term contract)?**
- 10(b) What would be the disadvantages?**
- 10(c) Given the low competitive interest for a provider to adopt such a practice if it's the only one to do so, would you agree to such a requirement?**
- 10(d) Does the promotional price's duration influence the approach to disclosing regular prices?**
- 10(e) Would sending notices before the end of the promotional price influence the approach to disclosing regular prices?**

Provincial laws prohibit merchants from charging a higher price than advertised and from making false and misleading representations.

At the same time, it's often difficult for providers to present only one (full) price, given the multiplicity of fee options (equipment purchases, rentals, etc.).

- 8. In your view, what would be the best approach by providers to ensure that consumers know that one-time or recurring fees will be added and that they will know the amounts?**
- 9. In your view, are the following practices likely to hinder consumers' knowledge of all the information:**
- a. Some information being displayed only in fine print?**
 - b. Some paragraphs on a Web page being hidden by default?**
 - c. Information being accessible only through multiple hyperlinks?**

Regarding a legislative and regulatory framework

- 10. In your view, is the current framework of the CRTC and provincial consumer-protection legislation sufficient for ensuring that the consumer makes an informed choice regarding communications services?**
- 11. Would a change in the frameworks for promotional information disclosed by communications service providers be necessary and well-advised? If so, what improvements and/or measures do you think should be introduced?**

Thank you for your collaboration.

Please return the completed questionnaire by **May 8, 2018 to:**

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