

Decision of the ADVERTISING REGULATORY BOARD



Complainant	Mr Maree Linde
Advertiser	MWEB. A Division of Internet Solutions Digital (Pty) Ltd
Consumer/Competitor	Consumer
File reference	455 - MWEB - Maree Linde
Outcome	Dismissed
Date	18 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Maree Linde against an email advertisement announcing MWEB's recent decision to stop throttling users' Fibre connections.

Description of the advertising

A copy of the advertisement, as supplied by the complainant, appears below. It states, *inter alia*, "**No Throttling** – That's right, you'll be pleased to know that we will not throttle our Uncapped Fibre products".

NOT TO BRAG, BUT...
MWEB FIBRE PRODUCTS ARE BETTER!



- NO THROTTLING!
- BETTER PRICES!

No more throttling!

Hi MWEBBER,

Not to brag, but your Fibre product just got a whole lot better! We've made an improvement to your MWEB Fibre product that is sure to get you excited.

No throttling - That's right, you'll be pleased to know that we will not throttle our Uncapped Fibre products. Now you can enjoy your Fibre experience without limitations.
What's more, this change is yours at no additional cost!

Yours in Connectivity,
MWEB

Complaint

The Complainant argued that the advertising was misleading, as he has measured his line connectivity, and was confident that his connection speeds were impacted during peak times. The explanation provided by MWEB was that line speeds were impacted by “shaping”, and not “throttling”. This is irrelevant from a customer’s perspective, because the impact remains the same; a slower connection. MWEB should not be allowed to market the product as a “No Throttling” offering when the lines are still being “shaped” in a manner that results in a slower connection.

As evidence of this, the complainant included screengrabs reflecting his monthly data usage volumes, and his Wi-Fi connection speeds measured on eight different occasions during September 2019. He explained that he was a 20Mbps Uncapped Fibre subscriber.

Response

The Advertiser denied any deception and insisted that it did not throttle customers' Fibre connections. It explained that the usage charts submitted by the complainant merely show a differentiation between night-time data usage (which occurs between midnight and 08:00) and regular usage periods. It argued that the Complainant was misreading this information.

It added that "shaping" and "throttling" are very different network management features, which are explained in its terms and conditions.

Briefly, "shaping" refers to prioritising certain types of traffic in a certain order. By way of example, "shaping" might allow browsing and email traffic priority over other types of data consumption. On the other hand, "throttling" refers to limiting a specific user's connection speeds as a whole. "Shaping" occurs at network level, and is applied to all MWEB customers, whereas "throttling" affects a particular user's experience. MWEB does not impose throttling on its Fibre lines.

Application of the Code of Advertising Practice

The Directorate considered Clause 4.2.1 of Section II (Misleading claims) to be relevant in this matter.

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

At the outset, the Directorate accepts that network connectivity and typical user experience is influenced by a number of different factors. On the one hand, consumers impact overall connectivity by connecting more or fewer devices concurrently, and having each device consume more or less data by running more or fewer applications while connected. On the other hand, network providers may experience intermittent outages or instability due to maintenance or faults, which could conceivably be exacerbated by the interdependencies between Fibre Network Provider (the entities who own and provide the fibre cables) and Internet Service Provider (in this instance MWEB). In some instances, technical settings and configuration impacts substantially, and in others, the solution is as simple as restarting one's device or router.

In the absence of a comprehensive test report, however, the impact of all such variables cannot be gauged, and no definitive comment can be expressed about the nature and quality of the Complainant’s connection. The Directorate therefore must base its decision on the information submitted by both parties.

Clause 4.2.1 of Section II prohibits advertising that is likely to mislead by means of ambiguity, deception exaggeration and inaccuracies.

The question before the Directorate is whether or not the claim that the Advertiser imposes “No Throttling” protocols on its Fibre products is misleading.

The Complainant’s frustration appears to relate to his network connection speeds. He submitted a screengrab which appears to have been taken from his mobile phone. This image charts the results of network speed tests (both download and upload) as follows:

Date of test	Download Speed	Upload Speed
26 September 2019 at 17:35	0,93Mbps	9,72Mbps
26 September 2019 at 15:48	17,4Mbps	9,85Mbps
23 September 2019 at 17:44	12,9Mbps	1,88Mbps
19 September 2019 at 11:29	6,07Mbps	9,32Mbps
11 September 2019 at 10:07	15,2Mbps	10,9Mbps
10 September 2019 at 13:14	18,9Mbps	9,94Mbps
9 September 2019 at 18:16	0,46Mbps	1,48Mbps
8 September 2019 at 10:30	17,6Mbps	10,1Mbps

From this, it would appear that the Complainant has not experienced consistent network speeds on his 20Mbps Fibre line. This also appears to have motivated the Complainant’s allegation that his line was being throttled to a lower speed during peak and off-peak times.

The Complainant also included images reflecting his data consumption (in volumes) between 29 August and 27 September 2019. While his images were virtually illegible, the Advertiser provided a clear copy of this chart. It indicates, *inter alia*, that the Complainant

downloaded a total of 311,99GB worth of data (reflected in dark blue), and uploaded a total of 18,32GB worth of data (reflected in light blue) over this 30-day period. This totals approximately 330GB worth of data consumed over this period. Furthermore, a total of 88,63GB worth of data (reflected in yellow) was transmitted within the Advertiser's "night-time" period. In isolated instances, the Complainant would consume between 40GB and 50GB in one day (often with an overlap between regular and night-time data), and on others he would consume as little as 5GB per day. While the Complainant was incorrect to submit that "the yellow sections indicate throttling", his concerns over general network speeds still warrant consideration.

The difficulty that the Directorate faced was having to balance the Advertiser's vehement denial of any throttling activities with the Complainant's intermittent drop in connectivity. The only reasonable way to achieve this was to compare the Complainant's speed test results with his data usage chart to determine whether there was an obvious correlation, which could conceivably support an allegation of throttling or deliberate line speed reduction. In other words, if high data usage always occurs with low speeds, it is possible he is being throttled in reaction to the high usage.

To do this, the Directorate averaged out the Complainant's data consumption of 330GB over 30 days to an average of 11GB per day. It is acknowledged that this might not be the only explanation, but it appears reasonable, given that:

1. Nothing in the Complainant's submissions suggest that his total consumption of 330GB over the month is materially lower than ordinary (i.e. the Directorate assumes that this is reasonably representative of the Complainant's general monthly consumption volumes), and
2. The Complainant's daily data consumption on 30 & 31 August 2019, and 3, 4, 5, 8, 9, 10, 12, 14, 15, 16, 17, 19, 22 September 2019 (i.e. 15 days during the period, which constitutes 50%) appears to have been roughly 11GB or less.

The next step was to compare speed test results which were substantially below the Complainant's 20Mbps subscription with actual data volumes transmitted during those days, in order to pinpoint any potential correlation. The logic being that low speed measurements should presumably correlate with low data consumption volumes.

The first significant drop in speed (refer the table above) was on 9 September 2019, when the Complainant's speed test at 18:16 showed a download speed of only 0,46Mbps. On this day, however, the Complainant's total data consumption (predominantly download traffic according to the chart) was marginally more than 10GB – in other words, not out of sync with the average of 11GB as calculated earlier.

On 11 September 2019, the Complainant's network test produced a download speed of 15,2Mbps. On the same day, however, he still transmitted roughly 12,5GB worth of data.

The next significant drop in speed was recorded on 19 September 2019 at 11:29, where the speed test reflected a download speed of only 6,07Mbps. On this day, the Complainant transmitted approximately 8GB worth of data, admittedly lower than the average of 11GB. However, if one considers the fact that on 30 August 2019, and 4, 10, and 12 September 2019 the Complainant appears to have transmitted even less data, this does not necessarily raise any concern. His speed test on 10 September 2019 (during which less than 5GB was transmitted) reflects a download speed of 18,9Mbps, which would negate any argument of "throttling" on that day. As such, the Directorate has no reason to assume that the 8GB worth of data transferred on 19 September 2019 was necessarily problematic, or due to throttling.

On 23 September 2019, the Complainant's download speed measured 12,9Mbps. However, he transmitted a total of 20GB worth of data on the same day, nearly double the estimated average of 11GB per day.

Finally, on 26 September 2019, the Complainant's network speed was measured at 0,93Mbps. On this day, however, he transmitted nearly 45GB worth of data, four times the estimated average daily volume.

To further put these measurements into perspective, the Directorate relied on the calculator provided at <https://downloadtimecalculator.com/>. This calculator provides a convenient way to "... estimate the time required to download any file based on your transfer speed without actually downloading any file". One simply inputs the size of the file and the network speed relied on, and an estimated download duration is calculated.

If the Complainant's network speed on 9 September 2019 was consistently throttled to 0,46Mbps, it should have taken him more than two days to download the 10GB worth of data he actually transmitted that day. Similarly, had the Complainant's speed on 26

September 2019 truly been throttled to only 0,93Mbps, it would have taken him nearly 5 days to transmit the amount of data he actually transmitted during that day.

These calculations appear to negate an argument of deliberate line speed throttling, at least to the point where it appears to corroborate the Advertiser's denial of any such activities.

While the Directorate can sympathise with the Complainant's frustration in experiencing intermitted and often poor connectivity, it is not convinced that these are indicative of **throttling** as alleged. These intermitted drops in line speed could reasonably be attributed to any number of the potential variables alluded to earlier in this discussion, and were, presumably, not for prolonged periods. It is also not possible to determine whether or not the Advertiser's "shaping" protocols played any part in these instances, as the Directorate has no idea how many devices were connected, or what applications were active during these periods of apparent poor network performance.

In short, the information presented to the Directorate does not appear to support the Complainant's argument that his Fibre connection was being throttled. While it might be prudent for the Advertiser to consider providing on-site network testing at the Complainant's premises in order to resolve the problem, the advertising in question does not appear to be misleading for the reasons advanced in the complaint.

As such, the advertisement is not found to be in contravention of Clause 4.2.1 of Section II of the Code.