

## **Stakeholder code of conduct - Measuring Broadband New Zealand – effective from 1 October 2023**

### **Background to the stakeholder code of conduct**

1. The Commerce Commission (Commission) has set up the Measuring Broadband New Zealand testing programme (MBNZ programme) to measure broadband performance across New Zealand households.
2. The objectives of the MBNZ programme are:
  - 2.1 to provide consumers with accurate, accessible, and independent information on broadband performance across different providers, plans, and technologies to help them choose the best broadband for their household; and
  - 2.2 to shine a light on broadband performance by allowing comparisons between providers and encouraging providers to compete on performance and not just price.
3. The MBNZ programme is delivered by SamKnows, a world leader in internet performance measurement. The Commission works with SamKnows to test a range of performance metrics including video streaming, online gaming and download and upload speeds and publishes regular reports that compare technologies, plans and geographies.

### **Purpose of the stakeholder code of conduct**

4. The purpose of this code of conduct (the code) is to ensure that parties involved in the MBNZ programme act in good faith and in accordance with the principles outlined in this document.

### **Code of conduct**

#### **Tested providers**

5. Tested broadband providers (providers) in the MBNZ programme agree to be bound by and act in accordance with the following principles:
  - 5.1 Act in good faith at all times and do not intentionally enhance, degrade, or tamper with test results of any individual MBNZ volunteer or broadband provider, or offer volunteers enhanced services, such as improved performance solely on the basis that they are volunteers.
  - 5.2 Comply with all data validation requirements where that data is available to the broadband provider and respond promptly (within 10 working days) to

information and validation requests for each testing period as outlined by the Commission and SamKnows.<sup>1 2</sup>

- 5.3 Refrain from publishing any MBNZ programme data, nor make public statements based on such data:
  - 5.3.1 until the Commission releases that data or makes a public statement about the results of those tests; or
  - 5.3.2 until a year has passed from the date of collection; or
  - 5.3.3 except where expressly permitted in writing by the Commission and SamKnows;

whichever comes first.
- 5.4 Do not misrepresent the MBNZ programme data, nor use it in false or misleading information or advertising. At all times comply with the Fair Trading Act 1986 in relation to the MBNZ programme.
- 5.5 Respect and uphold consumer rights and privacy under the MBNZ programme. At all times comply with the Consumer Guarantees Act 1993 and the Privacy Act 2020 in relation to the MBNZ programme, and, where applicable for the tested broadband provider, the TCF Broadband Marketing Code.<sup>3</sup>
- 5.6 Ensure that any volunteer recruitment to support the programme is conducted in good faith, does not target their employees, and that the broadband results are anticipated to be broadly representative of the service being provided to their customers.<sup>4</sup>
- 5.7 Ensure that any recruitment communications and any incentives offered to customers to be, or become, a volunteer for the programme adhere to the following:
  - 5.7.1 where the provider uses a specific campaign, all customers on the target technology/plan would be eligible for inclusion, and the provider must contact all of those customers about the programme and any incentives, or agree with the Commission a subset of

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<sup>1</sup> An example of the data validation sheet can be found on the Commission website in the MBNZ programmes Technical FAQs - <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/monitoring-new-zealands-broadband>.

<sup>2</sup> The Schedule for report releases, including the test month, validation periods and indicative timings for report releases can be found on the [MBNZ webpage](#).

<sup>3</sup> The TCF marketing code can be accessed on the TCF website - <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/broadband-marketing-code/>

<sup>4</sup> The Commission and SamKnows can help with recruitment activities. Examples of possible recruitment e-mails can be found in the Technical FAQs on the Commissions website (link in footnote 1 above).

customers to contact about the programme;

5.7.2 Providers should retain records of communications sent to customers on incentives (including proof that it contacted all relevant customers) and provide records to the Commission upon request. Where required by the Privacy Act, records may be depersonalised prior to provision to the Commission.

5.7.3 Providers notify SamKnows and the Commission of its planned communications prior to them being sent out, and after the communications are sent out to customers; and

5.7.4 Providers are responsible for the cost associated with any incentive payments/discounts they may choose to provide to customers participating in the programme.

5.8 Make data collected from embedded software available to the MBNZ programme, subject to compliance with the principles and approach for inclusion of embedded software data that will be published on the Commissions website.<sup>5</sup>

5.9 Ensure that its employees, agents, and representatives, as appropriate, comply with this code of conduct.

6. It shall not be a violation of principle 5.1 for a broadband provider to:

6.1 operate and manage its business, including modifying, improving, or enhancing services delivered to any class of subscribers (that may or may not include MBNZ volunteers), provided that such actions are consistent with normal business practices and in no way target volunteers under the MBNZ programme;

6.2 address service issues for individual volunteers at the request of the volunteer or based on information not derived from or connected to the MBNZ programme;

6.3 simulate or observe tests and components of the testing architecture, for academic and research purposes only, or to otherwise monitor the broadband provider's network in accordance with normal business practices, provided there is no impact on MBNZ programme data; and

6.4 embed testing software from SamKnows in their Customer Premises Equipment (CPE) and use the data and capability for their own purposes, including activities covered in 6.1, 6.2 and 6.3.

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<sup>5</sup> <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/monitoring-new-zealands-broadband>.

7. Tested broadband providers are to notify the Commission via email (market.regulation@comcom.govt.nz) when planning or executing any activities referred to in principle 6.4.
8. The Commission will treat all information provided under principle 7 as commercially sensitive and confidential.

### **Commission and SamKnows**

9. The Commission and SamKnows agree to be bound by and act in accordance with the following principles:
  - 9.1 Act in good faith at all times and ensure tested broadband providers are treated equally.
  - 9.2 Allow the incorporation of testing data from SamKnows' embedded software into the programme, where that data complies with the rules for inclusion of embedded data.
  - 9.3 Manage the MBNZ programme transparently and respond promptly to reasonable information requests from tested broadband providers. This includes publishing a reporting and validation schedule page on the Commission's website and providing notice to tested providers about publication and validation periods.<sup>6</sup>
  - 9.4 Not publish any MBNZ programme data, nor make public statements based on such data until:
    - 9.4.1 that data has been through a validation process;
    - 9.4.2 the metric is deemed to be statistically valid, where the Commission considers it appropriate to publish a result when it is of lower statistically validity (eg, where the result is indicative only, but deemed important to inform consumers), the Commission shall clearly disclose this and include appropriate caveats; and
    - 9.4.3 tested providers have been notified of the upcoming publication.
  - 9.5 Respect and uphold consumer rights and privacy under the MBNZ programme. At all times comply with the Consumer Guarantees Act 1993 and the Privacy Act 2020 in relation to the MBNZ programme.
  - 9.6 Ensure that its employees, agents, and representatives, as appropriate, comply with this code of conduct.
10. The Commission will respond to any complaints about activities referred to in

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<sup>6</sup> <https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/monitoring-new-zealands-broadband>.

principles 5, 6 and 7, and will inform tested broadband providers if it regards activities the Commission has become aware of as a breach of this code of conduct.

11. SamKnows will actively monitor testing results for indications of intentional enhancements, degradation, or tampering with the results for an individual volunteer or broadband providers.
12. SamKnows will make reasonable efforts to provide quality data to tested broadband providers for data validation requirements where that data is available to SamKnows, and respond promptly to information requests, for each testing period.

### **Non-Compliance with the Code of Conduct**

13. If the Commission believes that a tested provider is in breach of this code then the Commission shall bring that matter to the provider's attention, together with relevant supporting evidence. The provider shall respond promptly and may:
  - 13.1 Provide contrary evidence that shows that a breach has not occurred, or
  - 13.2 Provide evidence of remedial action that has or is being taken to ensure future compliance with the code.
14. The Commission shall consider the provider's response in good faith before taking any further action.
15. Tested broadband providers who do not comply with this code of conduct:
  - 15.1 will have their non-compliance with this code of conduct published alongside the MBNZ programme testing results each period; and
  - 15.2 may be removed from the reported results for any testing period or periods.
16. A serious or significant breach of this code of conduct may result in the tested broadband provider being removed from the MBNZ programme.
17. If SamKnows or the Commission do not comply with this code of conduct, then they will notify tested providers of their non-compliance and the steps proposed to remedy the non-compliance.
18. Providers should also note that the MBNZ programme outcomes and information provided by tested providers for the MBNZ programme fall within Section 103(2) of the Commerce Act, which provides that no person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it.<sup>7</sup> The Commission may take action under this section in relation to any breaches of this code of conduct or provision of information or testing results that fall into this category.

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<sup>7</sup> Section 103(2) of the Commerce Act 1986 - <https://legislation.govt.nz/act/public/1986/0005/latest/DLM89951.html>

## Signatories

- 2degrees
- Accelerate Wireless Ltd
- Commerce Commission
- Contact Energy
- Countrynet NZ
- Devoli Ltd
- Inspire Net Ltd
- Kiwi Wifi
- Lightwire
- Mackenzie Agricultural Technologies (MATnet)
- MediaTribe Ltd
- Mercury
- One New Zealand
- Prodigy Technology Services Ltd
- RexNetworks Ltd
- SamKnows Ltd
- Sky TV and Broadband
- Spark
- Starlink
- Ultimate Broadband
- Unifone
- Voyager Internet
- Whero Net
- WombatNET
- Yrless.