

5 November 2019

Mark Aue
Chief Executive
Two Degrees Mobile Limited
PO Box 8355
Symonds Street
Auckland, 1150

Dear Mark

Measuring Broadband New Zealand Programme: 2degrees' conduct from July to November 2018

1. This letter advises that the Commerce Commission (Commission) has completed its investigation into 2degrees' conduct under the Measuring Broadband New Zealand (MBNZ) programme delivered by SamKnows Limited (SamKnows).
2. The programme is conducted under section 9A of the Telecommunications Act 2001 (Act), and aims to provide consumers with independent information on broadband performance to help them choose the best broadband for their household.
3. Our opinion is that 2degrees' conduct between the period of July 2018 and November 2018 put at risk the integrity of the MBNZ programme and public trust in the results.
4. This letter highlights the conduct in question, and outlines measures taken by the Commerce Commission to maintain MBNZ programme integrity now and into the future.

2degrees' investigated conduct during the MBNZ programme

5. In December 2018, we opened an investigation as part of our functions under section 9A of the Act into 2degrees' conduct during the MBNZ programme. The reason for opening our investigation was that it came to our attention that 2degrees may have taken actions to identify and optimise the performance of MBNZ volunteers.
6. The purpose of our investigation was to maintain the integrity of the MBNZ programme and the results, and to ensure that any actions by 2degrees that could compromise the results of MBNZ programme were brought to an end.

Our findings

7. Based on the information gathered during our investigation, we identified that:
 - 7.1 2degrees used a computer script (or code) to identify customers on its network that were MBNZ volunteers;
 - 7.2 Names, addresses, plans and other information about 14 identified volunteers obtained from the script were circulated internally between 2degrees staff;
 - 7.3 2degrees then took some steps to try to enhance the performance of the 14 volunteers' internet connections. Two volunteers were moved to better (faster) plans and were given bespoke discounts so there was no increase in cost for them. One volunteer was temporarily disconnected to prompt them to contact 2degrees and discuss their broadband connection.

Protecting the integrity of the MBNZ programme

8. We have removed the 14 volunteers that have been affected by these actions from the MBNZ programme, to ensure there is no impact on the results.¹

Our expectations on 2degrees and all tested RSPs regarding future conduct

9. 2degrees has submitted a written commitment to the Commission that it has put an end to the investigated conduct, and that it has put appropriate processes in place to ensure this conduct won't happen again.
10. The commitment reflects the adherence of 2degrees to the code of conduct (code)² which all tested RSPs signed by 1st of July 2019, which came into force after the period considered in this investigation.
11. The code includes the following obligations on tested broadband providers:
 - 11.1 Act in good faith at all times and do not intentionally enhance, degrade, or tamper with test results of any individual panelist or broadband provider (clause 5.2);
 - 11.2 Ensure that its employees, agents, and representatives, as appropriate, comply with this code of conduct (clause 5.6).

¹ We re-issued our December 2018 report in May 2019 and removed the 14 volunteers from the updated report. The 14 volunteers' data was not used for our June 2019 report either. All SamKnows reports are accessible on the Commission's [website](#).

² MBNZ Code of Conduct (July 2019), https://comcom.govt.nz/data/assets/pdf_file/0025/157417/MBNZ-code-of-conduct-July-2019.PDF.

12. We will continue to actively monitor compliance with the code and may publicly disclose non-compliant behaviours in the future, to ensure the integrity of our monitoring functions.³
13. Consumers concerned with the conduct of their telecommunications provider may contact the Telecommunications Dispute Resolution service, or the Commerce Commission, depending on the nature of their complaint.

Further information

14. This letter is public information and will be published on our website.
15. Please contact Stephen Bass, Head of Compliance and Investigations (Stephen.Bass@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Gale', with a period at the end.

Stephen Gale

Telecommunications Commissioner

³ Clause 13 of the code says we will publish each tested broadband provider's compliance with the code, alongside the MBNZ programme testing results each period. Under clause 15 of the code, serious misconduct may result in the tested broadband provider being removed from the MBNZ programme.