2022 Review of the Measuring Broadband New Zealand programme

Commerce Commission

2degrees submission

16 March 2022

Summary

Thank you for the opportunity to comment on the Commerce Commission's Measuring Broadband New Zealand (**MBNZ**) Review 2022 (**the Review**).

2degrees have supported the MBNZ testing programme and agree it has provided useful independent information on most broadband technologies and providers in New Zealand.

We acknowledge the Commission's identification of the testing programme's limitations:

- The testing programme has technology and provider gaps in its reporting, for fixed wireless broadband.

- There needs to be a transparent process for including new technologies in the testing programme.

- Their needs to be a focus on volunteer recruitment and maintaining levels of volunteers.

- The lack of consistency of the testing programme reporting timings.

- The level of consumer awareness to aide broadband plan decision making.

We have provided specific feedback to the questions outlined in the consultation document below.

> **1. What providers, broadband plans, performance metrics and services should we consider removing or adding to the testing programme?**

2degrees support the Commission's recognition of the need for further initiatives to meet the testing programme objectives.

As identified by the Commission, the testing programme does not measure and report on all the current broadband technology in market. This is a significant limitation, particularly with the introduction of the new TCF codes requiring providers to use testing programme speeds in marketing. The Commission and the testing programme need to dedicate resource to ensure that all providers products such as wireless broadband are included.

2degrees would like the Commission to ensure that they are setting the appropriate expectations when reporting speeds and performance metrics. It is important that consumers understand that the current testing programme uses 'whiteboxes'. These are connected to the modem via a LAN connection and do not recreate the speed the consumer would receive via Wi-Fi. The Commission needs to make it clear, to avoid consumer confusion, in their current reporting that there are a significant number of factors outside of RSPs control that effect speeds e.g. wiring, location of modem, technology age.

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Clearly caveating the speeds with these factors ensures that consumers do not have an unrealistic expectation of what speeds they should be expected to receive from providers.

2. How should we approach onboarding or adding new providers, products and technologies?

To ensure that new products and technologies can be included in the testing programme a clear and transparent approach is required. 2degrees would expect the testing programme to set out a transparent and step by step process that outlines the information that RSPs should provide within a reasonable timeframe.

3. Should we encourage greater collaboration between the testing provider and the broadband providers to facilitate the testing of new products?

As stated above, there are gaps in the current programme but by potentially allowing commercial arrangements with the testing provider it may serve as a short-term option for RSPs substantiating their speed and performance.

As part of the TCF Broadband Marketing Code, the TCF are exploring the potential for commercial arrangements to be made between RSPs and an accredited testing provider. This will allow RSPs like 2degrees to independently measure our technology and market it accurately to our customers.

There needs to be some robust principles established, particularly if the information from these commercial arrangements were to be included as part of the testing programme reporting. For example, RSPs should not be pressured into establishing a commercial arrangement if a gap in their product suite exists and the data must not be shared or published by the test provider without RSP consent. In addition, the programme provider should not rely on commercial arrangements to fill products gaps, for the long term, as it may be inequitable for smaller providers and imposes a significant cost on industry.

4. What options should we consider, to recruit and maintain volunteers to support greater coverage of products, providers and plans?

5. What level of support should providers offer to the programme and to volunteers to promote the programme?

2degrees do not support a regulated requirement for the recruitment of volunteers. It is unclear what effect this would have on improving recruitment with potential negative impacts on smaller providers. We consider that with more positive

Commission communication about the testing programme we will be able to maintain enough volunteers for the testing programme to be effective.

2degrees have been supportive of the testing programme and have encouraged customers to participate as volunteers when requested in the past. We have not received any such requests recently.

In deciding what role, we play, we need to acknowledge and respect that customers may not wish to receive more communications from their service provider.

With the increased role the testing programme now has on how broadband products are marketed, attracting and maintaining an appropriate level of volunteers is essential for RSPs. Currently, there is no way for RSPs to provide incentives to customers wishing to participate in the testing programme. Incentives could attract consumers who previously did not see the benefit in participating in the testing programme. However, before RSPs can consider offering incentives, the Commission would need to undertake work to ensure transparency of process and impacts on equity. This needs to include the establishment of a robust process, consideration of appropriate incentives and the impacts on equity for providers who may be unable to offer the same incentives.

> **6. Should we consider applying different reporting thresholds for some testing, for example smaller sample sizes, where it has been difficult to get enough volunteers?**

2degrees supports the consideration of different reporting thresholds for new products or smaller providers. This needs to be balanced with the assurances that the reporting of smaller thresholds is transparent and remains statistically significant. If thresholds are altered without sufficient consumer education, consumers may be misled to the actual performance of the technology or provider.

> **7. How often do you think we should report test results? Why?**

2degrees agree that testing programme reporting should indicate current levels of performance in market. To date, we have not seen evidence of significant variation in the quarterly data to support an increased number of reports. 2degrees understand that in the UK, where SamKnows do similar testing for providers, reports are produced every 6 months.

With the introduction of the TCF Broadband Marketing Code, RSPs have an obligation to ensure that marketing materials are updated based on the recent testing programme reports. As a result, RSPs will have to regularly update online and offline marketing, with associated resource and cost implications.

Currently, the reports are not being released on a consistent date which does not allow for the effective planning and allocation of resource. We would urge the Commission and the testing provider to commit to quarterly dates, which allow for more effective use of resource and regular updates for consumers.

The additional reporting being considered by the Commission will come with increased cost to both the testing programme and industry. We support the Commission considering whether there is significant benefit in increased reporting or funding could be better invested in initiatives that attract more volunteers.

8. What changes should we make to our current testing and reporting to better support consumer choice?

The Commission has an important role in improving the testing programme to achieve the objective of improving consumer choice. According to the Commission the 'programme is designed to provide consumers with independent information on broadband performance across different providers, plans, and technologies, to help them choose the best broadband for their household'.

Ensuring fixed broadband products are tested, and an appropriate process for new services such as 5G fixed wireless, is an important step to this.

The significant changes to marketing, now requiring latest MBNZ speeds to be reported by providers in advertising, make the results readily accessible to consumers when considering and comparing broadband products.

We would also support the MBNZ Report having a clear section outlining the different factors that influence what might make a broadband plan right for them. These could include:

- Location, often technology options will be more suitable to consumers based on where they live e.g., rural, urban, apartments or even suburban locations.

- Usage v cost, for example a Fibre Max plan may offer the highest download and upload speeds, but often are more expensive than a wireless broadband that may more adequately cater for the consumers' needs.

These issues should be easily explained and have the potential of achieving increased consumer understanding of the results of the testing programme.

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9. Software based testing approach

As it currently stands, there is not enough information on a software-based testing approach for 2degrees to provide substantive comment.

A significant amount of work needs to be completed to understand the impacts of software-based testing on our New Zealand regulatory obligations, costs (both upfront and ongoing), liability, security, risks and consumer appetite.