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15 March 2024

## Product Disclosure – Coverage Map DRAFT Guidelines

### Introduction

Mercury NZ Limited (Mercury) welcomes the opportunity to provide feedback to the Commerce Commission (the Commission) on its draft *Product Disclosure – Coverage Map Guidelines* (the Guidelines). We appreciate the time allocated to this consultation process.

Mercury is an electricity generation and multi-product utility retailer of electricity, gas, broadband and mobile services.<sup>1</sup> Our mobile services are delivered as a Mobile Virtual Network Operator (MVNO). We do not own, operate, or maintain the network that we use to deliver our mobile services.

We understand the primary focus of the draft Coverage Maps Guidelines is to improve the quality of the existing mobile coverage maps and retail service providers (RSPs) practices regarding their use and display. We support the intentions behind these Guidelines to improve transparency and accessibility for consumers in relation to mobile network coverage.

Mercury's submission should be read alongside the TCF submission.

Our feedback on this consultation is limited to:

1. consumer ability to compare coverage between RSPs;
2. defining material coverage issue;
3. managing and resolving material coverage issues;
4. right to exit due to a material mobile coverage issue;

### Consumer ability to compare coverage between RSPs

Under these draft Guidelines the Commission expects RSPs offering mobile services to make coverage maps available on their website. Mercury does not object to displaying our MNO's coverage map, but for the removal of doubt such a measure is unlikely to enhance consumers' ability to compare coverage across different providers because in this scenario, the coverage maps would be identical.

Until unique network spectrum options emerge, all MVNO's in New Zealand share the same coverage as their MNOs, including access to 4G and 5G networks. The local wholesale mobile market is still in its infancy, and unlike overseas markets where MVNO agreements are starting to involve multiple network operators, we anticipate the one-MNO-one-MVNO arrangement will persist in New Zealand.

Thus, while we can make coverage maps available on our website, consumers will not necessarily be able to compare coverage between all retail mobile providers.

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<sup>1</sup> We are listed on the New Zealand Stock Exchange and the Australian Stock Exchange and the New Zealand Government holds a legislated minimum 51% shareholding. We operate 18 generation sites; 9 Hydroelectric sites, 5 Geothermal, and 4 Wind Farms. 2022, Mercury acquired the retail business of Trustpower and in June 2023 we began operating as one under the Mercury brand.



In addition, the Commission has proposed for RSP's to make available standardised supporting information that outlines factors that can degrade cellular performance, and, if applicable, how a consumer might mitigate these factors.

We agree that there are some common factors that can degrade cellular performance and that there are simple ways consumers might mitigate some of these factors. Ofcom maintains a website with information on indoor and outdoor coverage improvements.<sup>2</sup> In our view the TCF could achieve a standardised document which outlines some of the most common factors that can affect indoor performance generally. We would encourage the Commission support the industry in its development of a coverage consumer guide which could be published on the Commission's website as well.

### **Defining material coverage issue will require coordination and appropriate timeframes**

The draft Guidelines purpose includes improving consumers' rights in case of a material coverage issue. Consumers should not be unfairly penalised for exiting a service or returning a good that does not live up to its expectations. There is existing legislation that covers these issues, although we appreciate the Commission is trying to clarify its expectations in the mobile market.

Our primary concern relates to the technical difficulty in defining "material coverage issue" with regards to mobile connectivity. The term 'materially fail' varies widely in interpretation and without further details it would prove challenging to implement these Guidelines. We note that the concept of material coverage issue, alongside 'exit rights', was introduced in the 2021 *Marketing alternative telecommunications services during the transition away from copper Guidelines* (MAS Guidelines).

The industry encountered significant challenges in developing and implementing the MAS Guidelines, particularly around defining, and applying these terms. Given these learnings, we encourage the Commission to consider a further round of consultation, both written and via a workshop as it did during the development of the 111 Code, to ensure the best outcomes for consumers.

### **Managing and resolving material coverage issues**

In our view, it is critical to understand the Commission's view of what constitutes a resolution to a material coverage issue. For instance, if limited coverage due to indoor constraints can be mitigated by WiFi calling, does this constitute an acceptable solution? Having direction from the Commission on these important matters is essential. Ofcom for example, calls out the availability of calling over WiFi on their website:

*"Some mobile providers also offer a way to make calls using a wifi connection. This can be a good solution if your home or workplace has poor mobile coverage but a good wifi connection. Some networks allow you to do this automatically using 'wifi calling', while others may require you to load a dedicated app."*<sup>3</sup>

Including principled clarifications in these Guidelines, similar to the ones found in the MAS Guidelines, would be helpful.

We would also welcome further discussion on whether material coverage issue is limited to the customer's most common routes, such as to and from work, or to and from home, or if it would need to apply if the customer travels sporadically to a remote location.

This difference is critically important:

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<sup>2</sup> Available from <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/improving-mobile-phone-reception>

<sup>3</sup> Available from <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/advice/improving-mobile-phone-reception>



1. guidelines should clarify expectations for customers who reside, travel or work through a known blackspot (or customers who move to a property that has known coverage issues). There may be a risk of perverse outcomes, whereby granting consumers an 'exit right' could inadvertently foster 'adverse selection' by some retailers to avoid risk. This could lead to a market where services are disproportionately available to those in well-served regions, exacerbating the digital divide and reducing competitive pressures to improve service in underserved areas; and
2. there is also the issue of mobile service availability, coverage or performance in specific areas which might be generally well-covered but suffer from temporary congestion during peak times, such as during the holiday seasons. It is unclear how material coverage issues should be considered in these instances.

We recommend:

1. the Commission align the wording of the time to resolve a materiality issue to the MAS Guidelines; and
2. clarify that where a material coverage issue occurs and the consumer wishes to exit their service, it is from when the retailer was notified of the issue.

### **Implications of early termination fee (ETF) as a result of material issue**

As we understand it, the draft Guidelines note that if a consumer decides to terminate a mobile service due to substantial coverage issues within a bundle, they may either exit the bundle without penalties or end only the mobile service. In the latter case, they retain the right to applicable discounts on other services, such as electricity, for a minimum period.

Recognising the critical importance of consumer rights, we agree consumers should not face unfair penalties for exiting a service or returning a product that fails to meet expectations.

However, extending this right to terminate an entire bundled contract, including termination of services like electricity or broadband, which are independent of mobile service quality and are delivered to the consumer as expected, seems to go beyond what would be considered a reasonable remedy. Especially when these Guidelines also require the continuation of benefits across a bundle.

In our view, being able to terminate an entire bundled contract due to dissatisfaction with an element of it, creates a disproportionate operational and financial burden on bundled service providers. It also undermines the integrity of bundled offerings.

We suggest the Commission consider proportional remedies for coverage dissatisfaction within these Guidelines that do not necessitate exiting the entire bundle.

### **Additional comments**

#### *Implementation timeframe to be extended*

The requirements in these Draft Guidelines require updates not only for MNOs to upgrade the existing coverage maps; but for MVNOs (and MNOs) to update terms and conditions; develop new governance structures for requests in the event of issues; and finally, user testing. This is all in addition to the industry having to develop a set of standards for materiality, which will take some time.

In our view, proper time and consideration must be allowed in order to achieve the intended purpose of the Guidelines as well as weighing up against the milestones outlined in the draft Price & Cost Guidelines and the Bundling Guidelines. Three months is unlikely to be sufficient time to implement these draft Mobile Coverage Guidelines. In our view, 12 months might be a more achievable timeframe.



*Ex-post review*

As we note in our submission to the draft Price & Cost Guidelines, markets and technologies evolve, and regulators must be adaptable to remain effective. We have supported Commission in undertaking post-implementation reviews to ensure guidelines remain relevant and effective. However, the Commission must ensure they have allocated sufficient time for the full effects of the guidelines to manifest and be assessed so as not to overburden stakeholders with a regulatory environment that might be characterised by too much change.

Ultimately, a well-considered review cycle will support the creation of a stable, transparent, and effective framework that benefits consumers and industry alike. We acknowledge it is challenging meeting all stakeholders needs, and we appreciate the time the Commission has spent in helping stakeholders navigate the transition so far. We look forward to continued engagement in matters relating to these Guidelines.

If you have any questions about this submission, please do not hesitate to contact me,

Yours sincerely,  
Claudia Vianello



Regulatory Strategist

