

# **Marketing of alternative services to consumers during copper/PSTN withdrawal**

**Commerce Commission**

2degrees submission, 27 August 2021





# 1 Introduction

Thank you for the opportunity to provide comments on the Commerce Commission’s open letter regarding the *‘Marketing of alternative services to consumers during copper/PSTN withdrawal’*.

As New Zealand’s telecommunications challenger, 2degrees have a long history of fighting for fair’, whether that is our commitment to increasing levels of competition, easing the process of switching between providers, or improving New Zealanders’ customer experience. This is reflected in our purpose: ‘Fighting for Fair to make New Zealand a Better Place to Live’.

2degrees is the only telco in Colmar Brunton’s Corporate Reputation Top 20 Index and we are ranked as one of the ‘fairest’ companies in New Zealand. It will come as no surprise then, that 2degrees take seriously the trust our customers place in us, and that we are strong supporters of the fair marketing of telecommunications services to consumers – both those on copper connections, which the Commission’s open letter is focussed on, as well as more broadly.

To support this, and in addition to complying with cross-sector obligations such as the Fair Trading Act (FTA), 2degrees are an active participant in the development of TCF codes to ensure that our industry is providing appropriate information to our consumers. This includes the Broadband Product Disclosure Code, which is about ensuring we provide consumers with accurate and reliable information about the services being offered, their consumer rights and our responsibilities as telecommunication providers. While this Code is currently limited to fibre and copper services, 2degrees already provide consumers with an ‘offer summary’ for our fixed wireless services, consistent with this Code.<sup>1</sup>

Of course, as a Telecommunications Dispute Resolution Scheme (TDRS) member, 2degrees also actively promote and work with the TDRS to ensure that if our customers have complaints about the information we have provided, they have an independent body to investigate the complaint and take appropriate action.

## 2degrees supports ensuring consumers are well-informed, whilst ensuring a competitive playing field

The Commission’s open letter proposes that the Commission issue guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001, specifically regarding the marketing of alternative telecommunications services to current copper consumers.

2degrees are supportive of initiatives that ensure consumers are appropriately well informed of their telecommunications services, and we broadly support the outcomes the Commission has outlined. However, we would like to highlight several concerns we have identified with the details, including some of the principles, of the current proposed approach, for the Commission’s consideration. We want to ensure competition that benefits consumers is not unintentionally hindered, including in the wider telecommunications market.

- **Scope - Marketing to Copper Connections:** While the purpose of this work is to address particular marketing concerns for specific consumers – those that are subject to a transition

---

<sup>1</sup> The TCF also have plans to expand this Code to include fixed wireless services.



from copper line services – and the Commission's urgency for these changes reflect copper transition timing, we are concerned that many of the proposals could reach beyond this purpose. We do not think it is appropriate to change or create precedent for the wider market through a 'fast-track' process related to copper transition. The Commission should ensure any future 'outcomes' and 'principles' are clearly focussed on marketing to consumers with copper connections.

- **Applicable Industry-wide:** Marketing to copper-based consumers occurs from both Retail Service Providers (RSPs) and Wholesale Service Providers (WSPs). It is important that the Commission ensures that any new rules to help consumers are applied to all marketing to copper consumers, by all members of the industry that carry out this marketing. For example, the 'principles' in Outcome 2, such as 'remind[ing] consumers that they are likely to have the choice of several competing options depending on their location' would equally apply to WSP as well as RSP marketing.
- **Practical implementation:** It is important the Commission not seek obligations that competing RSPs would be unable to meet in practice, nor that require RSPs to promote or have knowledge of, competitor products. For example, competing RSPs marketing to new consumers may not have information on a potential customer's usage and spend available to them; independent reports, such as the *Measuring Broadband New Zealand* programme, may not collect relevant information to refer to, particularly for non-fibre services.
- **Consistency and duplication of other legislation and codes:** The Commission must ensure any requirements are consistent with other operator requirements under legislation such as the FTA. We are concerned to ensure that any telecommunications-specific requirements are not inconsistent or do not undermine other important consumer protection requirements, which have long-standing precedents for the industry. In addition, we note many of the 'principles' of the Commission's open letter appear to already be covered by operator requirements under the FTA or other industry codes. We do not consider this work should be replicating those requirements.

## 2degrees support an industry code

2degrees agree with the Commission that if a Code is to be drafted, this should be drafted by industry, co-ordinated by the TCF. As a member of the TCF, 2degrees acknowledges the role the TCF has in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers.

While we are not aware of issues related to 2degrees' marketing of services to current copper consumers, members of the TCF, including 2degrees, have considerable expertise and experience relevant to the implementation of this work, which should be drawn on to ensure an effective and practical solution to address the Commission's concerns.



## 2 Key points on the Commission's Open Letter

### The focus should be the marketing of alternative services to copper/PSTN withdrawal consumers

2degrees are supportive of ensuring that the marketing of services to consumers who currently have copper/PSTN services is correct and appropriate. However, we are concerned that some of the outcomes and principles set out in the Commission's open letter have wider implications and extend beyond the purpose of ensuring fair marketing of alternative services to copper/PSTN services.

While we understand that some of these outcomes and principles are not without merit, a more considered approach, that considers the full impact of changes needs to be undertaken before implementing changes which impact the wider market.

For example:

#### Outcome 3, principle (c)

*RSPs should avoid making "up to" speed claims or using maximum theoretical speeds in advertising.*

Under the FTA, such claims in marketing are appropriate. Provided an 'up to' claim is objectively justifiable, we see value to consumers in providing this information. We would be very concerned if 'fast-tracked' guidelines or a Code to address marketing to current copper consumers, undermined what is appropriate across multiple services and industries. This includes setting a precedent for all telecommunications marketing.

We understand why the Commission would like to address copper customers in the short-term, however we consider this is a significant policy decision that the Commission should address in a more considered process. We are also not clear this change is necessary in the context of multiple other requirements that telecommunications service providers are subject too and that the Commission is proposing.

### The Commission should not impose requirements that RSPs are unable to meet, nor that require RSPs to promote competitors.

We are concerned that some of the requirements set out in the Commission's open letter are unable to reasonably be met by a competing RSP and favour certain technologies, even though those services might not be the option best suited to consumers.

For example:

#### Outcome 2, principle (c)

*RSPs should ensure that consumers have information on their usage and spend profile so that they can meaningfully compare different services and service providers.*

This implies that RSPs marketing to consumers have information on consumer usage and spend available to them. This may not be the case. Importantly, RSPs compete for consumers that are not their current customer.



### **Outcome 3, principle (d) and principle (e)**

*(d) RSPs should use likely actual peak time download speeds when advertising alternative telecommunications services so that consumers understand what they can expect before making their purchasing decision.*

*(e) Likely actual speed indications should be objectively justifiable, and independently verifiable, such as by reference to the Measuring Broadband New Zealand programme.*

These requirements are more suitable to fibre services as opposed to fixed wireless services. Likely actual peak time download speeds will depend on the location of specific customers, and if required at a granular level, would require 'real life' testing. This is not suited to general marketing campaigns across competing technologies. We also note independent reports, such as the *Measuring Broadband New Zealand* programme, do not collect or provide a breakdown enabling RSPs to meet this requirement, unless the Commission considers an average speed across the country (and across providers for fixed wireless services) to be appropriate.

### **The Commission must ensure this work is consistent with legislative obligations**

2degrees are committed to operating in a manner that reflects our obligations under the Fair Trading Act 1986 (the FTA) and all other New Zealand legislation and regulations. The FTA sets out rules to promote fair competition and make sure consumers get accurate information before buying products and services. We consider this appropriately protects consumers from incomplete, confusing or misleading information.

We want to ensure that any telecommunications-specific requirements are not inconsistent or do not undermine other important consumer protection requirements, which have long-standing precedents for the industry. In addition, we note many of the 'principles' of the Commission's open letter appear to already be covered by operator requirements under the FTA. We do not consider a Code or guidelines should be replicating the conduct already covered under the FTA.

### **Marketing of alternative services must be applied consistently across industry**

Both RSPs and WSPs market services to consumers – including copper consumers. The requirements of the proposed guidelines/Code are not all covered by other requirements, for example the Copper Withdrawal Code. It is important the Commission ensure that any new rules that apply to marketing to copper consumers apply to all industry that carry out this marketing. This will include both RSPs and WSPs. As currently drafted, we are concerned only RSPs are targeted.

For example:

### **Outcome 2, principle (a)**

*RSPs should remind consumers that they are likely to have the choice of several competing options depending on their location – including different technologies, services and service providers.*

We are unclear why this would only apply to some industry participants that market to copper consumers and not others. We consider all industry participants should be subject to the same principles and outcomes. Not ensuring this, would undermine the principle.



### 3 Outcomes and Principles – detailed feedback

Below 2degrees have provided initial feedback on each of the Commerce Commission’s proposed outcomes and principles, as set out in its open letter. We will consider this further in any ‘next steps’.

We assume that ‘Consumers’ in the context of the Commission’s open letter on *Marketing of alternative services to consumers during copper/PSTN withdrawal* refers only to consumers on copper-based plans.

While not individually noted, it is clear many of these ‘principles’ can and should apply to all operators (RSPs or WSPs) that may market services to consumers during copper/PSTN withdrawal.

#### Outcome 1

*Consumers are given appropriate notice of any change to their copper-based telecommunications services and should not have to make decisions under pressure of time.*

2degrees are broadly supportive of the aims of Outcome 1. We believe that consumers should be given accurate, timely information regarding changes to the provision of their copper service to ensure they can make the right decision for them without time pressure.

#### Principles

Principle	2degrees comment
(a) RSPs should provide consumers with as much notice as possible, and not less than four months’ notice, of any change to their copper service.	It is in RSPs interests, as customer focussed companies, to provide our customers with prompt information about how we can provide suitable alternative telecommunication services. However, RSPs ability to comply with this will depend on the wholesale copper provider providing sufficient notice to RSPs. The Copper Withdrawal Code does provide a process of how and when RSPs and consumers are provided with information about changes to their copper service.
(b) RSPs should explain clearly to consumers the reasons why they need to move off their copper service and onto an alternative service.	Agree – where marketing material suggests consumers must move off their current copper service they should clearly explaining why.
(c) RSPs should not give copper withdrawal as a reason for moving unless they can point to a formal notification from Chorus relating to that consumer’s premises.	Copper is a legacy technology and providing customers with alternatives can help future proof or improve access to telecommunication services.  We agree that ‘copper withdrawal’ should not be given as the primary reason for moving customers if a notice has not been given.  We note some of our customers, depending on usage or personal factors, may benefit from alternative, competitive, telecommunications solutions such as wireless broadband prior to copper withdrawal.
(d) RSPs should not give PSTN withdrawal as a reason for moving unless they can point to a	Please see above.



Principle	2degrees comment
formal notification from Spark relating to that consumer's premises.	
(e) RSPs should be open with consumers about any commercial decisions they make to cease supplying copper services ahead of formal copper withdrawal by Chorus or PSTN withdrawal by Spark.	Please see above.
(f) RSPs should avoid creating the impression that copper services (including re-sold PSTN services) are not available to consumers just because that RSP has decided to cease supplying them ahead of formal withdrawal by Chorus or Spark.	Agree - Consumers should not be misled.
(g) RSPs should respond in a timely and accurate manner to all requests for clarification or further information from consumers.	We consider that this is part of our BAU. It is in RSP's best interests to address customers' requests in a timely and accurate manner. This is also part of the competitive process. As such, while we agree with the intention of this, we do not consider this should be a codified 'principle'.

## Outcome 2

*Consumers are given sufficient information to decide what alternative telecommunications service is best for them as they transition off copper-based services.*

2degrees broadly supports Outcome 2, but is concerned about the practicalities and appropriateness of the detailed principles underpinning this. At a high-level, we are concerned:

- The Commerce Commission does not require a commercial company to market competing technology services.
- Some of the principles are replicating other requirements already set out in legislation.
- The broadness of some of the proposed requirements, means that it is difficult to determine what some of the principles are intending to capture.
- This outcome and related conduct principles need to apply to all operators marketing to consumers (RSPs and wholesale service providers).

We set out further comments in the table below.

Principle	2degrees comment
(a) RSPs should remind consumers that they are likely to have the choice of several competing options depending on their location – including different technologies, services and service providers.	We support the general intent of this principle but have concerns about how this would work in practice. As RSPs we are commercial entities that, as part of the competitive process, seek to differentiate ourselves from our competitors. It should not be expected that we advertise, or know details of, alternative providers' services. We are supportive of providing consumers with options that 2degrees can provide, and note that



Principle	2degrees comment
	<p>throughout our online 'sign-up journey' we provide alternative 2degrees products that may suit the individuals needs based on their location.</p> <p>We recommend that '<i>including different technologies, services and service providers</i>' is removed from the above.</p>
<p>(b) RSPs should encourage consumers to use independent information, such as Internet New Zealand's <a href="http://www.broadbandmap.nz">www.broadbandmap.nz</a>, to see what alternative services are available at their location.</p>	<p>We note 2degrees provide our customer's an 'address checker' that allows consumers to view what products they have available to them at their location. These services include copper, wireless and fibre.</p>
<p>(c) RSPs should ensure that consumers have information on their usage and spend profile so that they can meaningfully compare different services and service providers.</p>	<p>This principle should be removed. This implies that RSPs marketing to consumers have information on consumer usage and spend available to them. This may not be the case. Importantly, RSPs compete for consumers that are not their current customer.</p>
<p>(d) RSPs should prompt consumers to use the information available to them to decide what technology, service and service provider is best for meeting their requirements.</p>	<p>See comments above.</p>
<p>(e) When promoting a particular service to a consumer RSPs must not create the impression that this is the only option available to that consumer.</p>	<p>We agree consumers should not be misled. However, 2degrees is concerned that the Commission is seeking to create a principle for something that is already covered under the FTA. The FTA has statutory defined processes, penalties and enforcement actions that can be taken to ensure that telecommunications providers are meeting their obligations under the FTA. We are unclear the intent of Parliament was to allow the creation of guidelines under the Telecommunications Act 2001 to prohibit behaviour already prohibited. (This also raises double jeopardy concerns i.e., an RSP is found to have breached a Code and Act for the same conduct).</p> <p>We also note that explanatory guidance would be required if there is 'only one option' due to location constraints or individual circumstances, so this principle does not apply.</p>
<p>(f) When promoting a particular service to a consumer RSPs must not create the impression that the consumer will lose their telecommunications service unless they move to the promoted service.</p>	<p>Please see comments in 2(e) above.</p>





### Outcome 3

Consumers are given clear and accurate information about the technical and performance characteristics of alternative telecommunications services.

2degrees are supportive of customers having sufficient information to understand the technical and performance

characteristics of alternative communication services regarding the withdrawal of copper services. However, we are concerned that listed principles underpinning Outcome 3 are not all able to be implemented in practice, could have significantly broader implications, and would need to be subject to a fuller consultation and policy development process, which is not possible in the short period of time envisaged by the Commission.

Based on the above, and our comments set out in the table below, we strongly recommend that this outcome be reconsidered.

Principle	2degrees comment
(a) RSPs should set appropriate expectations about what their alternative telecommunications services are likely to deliver for consumers.	2degrees work hard to ensure that our customers receive a service that matches their expectations. That is why, for example, we provide a 30-day money back guarantee on our wireless broadband services, to allow consumers to explore other options if this does not meet their needs.  While we support the intention of this principle, and strongly agree that consumers must not be misled, this principle has the potential to inadvertently reduce information provided to consumers, due to concerns about inadvertently making misleading claims. This principle needs to be clear what 'appropriate expectations' are and from whose perspective are they being set.
(b) RSPs should ensure consumers are given upfront information about the factors known to affect the service performance of alternative telecommunications services.	We agree that consumers should be provided relevant upfront information, however this needs to be within appropriate limitations – for example, operators this should not include specific geographic or technical constraints for individual customers.
(c) RSPs should avoid making “up to” speed claims or using maximum theoretical speeds in advertising.	2degrees consider that this principle is contrary to our requirements under the FTA. Currently RSPs can make 'up to' claims if that 'up to' claim is true. We believe these claims are helpful to consumers, and we are unclear why if it is not considered misleading under the FTA it should be prohibited to potential customers that are currently receiving copper-based services.
(d) RSPs should use likely actual peak time download speeds when advertising alternative telecommunications services so that consumers understand what they can expect before making their purchasing decision.	We are concerned that, depending on the expected level of granularity, this is not practical to implement. While we understand the intention, 'likely actual peak time download speeds' will depend on the specific location of customers, and - for certain technologies – would require more comprehensive 'real life' testing, not suited to general marketing campaigns.



Principle	2degrees comment
(e) Likely actual speed indications should be objectively justifiable, and independently verifiable, such as by reference to the Measuring Broadband New Zealand programme.	Please see above comment. We are concerned this may not be practical to implement. We note not all actual speed indications for all technologies may be available independently. For example, the Measuring Broadband New Zealand programme, does not collect or provide a break down enabling RSPs to meet this requirement, unless the Commission considers an average speed across the country (and across providers for fixed wireless services) to be appropriate.
(f) RSPs should allow consumers to move to a different service, or walk away from their service, without penalty, if the selected service does not meet expected requirements.	It would need to be clear as to what the 'expected requirements' that would allow this were. These should be able to be independently measured, and there would need to be a clearly defined timeframe for how a customer could move to a different service without penalty. As the Commission will understand, connecting consumers is not costless and there are likely to be appropriate, fair limitations to such a principle.
(g) Any comparisons that RSPs make to other telecommunications services should be made on a "like for like" basis and claims should be objectively justifiable and independently verifiable.	As currently drafted, it is unclear: <ul style="list-style-type: none"> <li>- What 'like for like' means when different providers offer different services and technologies?</li> <li>- Who determines what is objectively justifiable and independently verifiable?</li> <li>- Who measures the claims?</li> </ul>
(h) Conditions, qualifications and disclaimers in advertising should not alter the nature of the service the consumer is otherwise led to expect.	We agree with this principle but believe that the FTA already requires this and it should not be replicated as a principle here.

## Outcome 4

*Consumers are given information on how moving from copper telecommunications services to alternative telecommunications services could impact the operation of their home equipment.*

2degrees believe that this is an important outcome, and we support it. However, we note that these outcomes and principles are covered under the 111 Contact Code and we recommend that this outcome, although important, should not be replicated here.

Principle	2degrees comment
(a) RSPs should remind consumers that in the transition to an alternative telecommunications service: (i) They may not be able to make emergency calls in a power cut without a suitable back-up; ii) They may need to work with their medical or home alarm provider to ensure continuity of services; and	We support this principle but this is already required under the 111 Contact Code. We recommend that this principle is removed.



Principle	2degrees comment
(ii) They may need to make changes to their jack points to keep a home phone in the same location in their house.	
(b) RSPs must comply in all other respects with their obligations under the 111 Contact Code including those vulnerable consumers are made aware of their rights under the 111 Contact Code.	We support this principle but this is already required under the 111 Contact Code. We recommend that this principle is removed.

### Outcome 5

*Consumers are given clear information about the costs or fees associated with moving from copper-based telecommunications services to alternative telecommunications services.*

2degrees support this outcome. However, given it is already covered under the Broadband Product Disclosure Code we recommend that this is not replicated here.

Principle	2degrees comment
(a) RSPs should clearly communicate any costs or fees, such as termination fees, equipment fees or changes in contract price at the point of sale to allow consumers to make informed decisions.	We support this principle, but this is already covered and consistent with the Broadband Product Disclosure Code. This provides for fibre and copper 'Offer Summaries' setting out this information. While fixed wireless services are not yet covered, we note RSPs providing FWA services already provide an Offer Summary, which sets out these aspects, and the TCF is planning on adding fixed wireless services to this code.

### Outcome 6

*Consumers understand their rights to their landline number.*

We agree with the outcome and have no comment regarding the consumers rights to their landline numbers.

Principle	2degrees comment
(a) RSPs should remind consumers that they can "port" or take their number with them to a new service or another RSP.	
(b) RSPs should not create the impression that consumers will lose their number unless they stay with that RSP.	
(c) RSPs should direct consumers to the Commission website's number portability page, or to the Number Administration 7 Deed's page on landline numbers, for more detailed information.	



## Outcome 7

*Consumers should know where to go to resolve any issues associated with the marketing or performance of alternative services as they move off copper.*

We agree with the intention of this outcome, however are unclear that this should be 'codified'.

Principle	2degrees comment
(a) RSPs should endeavour to resolve any issues associated with the sales, marketing or performance of their alternative services promptly with consumers.	We already strive to do this. While it is in our interest to resolve any issues with our customers as promptly as possible, it is not clear this should be a principle to be 'codified'. We consider this principle should be removed.
(b) RSPs should remind consumers that they have access to independent dispute resolution services, including the Telecommunications Dispute Resolution service, if they cannot reach a resolution with their RSP.	While important, operators are already required to raise awareness of the TDRS to consumers in multiple locations and we recommend that this principle is not further replicated here.