

# **DRAFT Product Disclosure – Coverage Map Guidelines**

**2degrees' Submission in response  
to Commerce Commission consultation**

15 March 2024

PUBLIC





## 1 Introduction

Thank you for the opportunity to comment on the Commerce Commission ‘Draft Product Disclosure – Coverage Map Guidelines’ (**Draft CM Guidelines**).

In line with our Purpose of Fighting for Fair, 2degrees is a supporter of the high level ‘intent’ of the Draft CM Guidelines: to ensure consumers have improved access to coverage maps, and that they are treated fairly in the case where their mobile coverage doesn’t match up with our service offering. We are a consumer champion, and we want our customers to be happy with the services we provide them, and to treat them well.

Reflecting this, 2degrees already have consumer-friendly measures in place:

- We provide an indicative coverage map, where consumers can check mobile coverage across New Zealand, including through an address checker. Recognising the inherent limitations of modelled coverage maps, we clearly state that signal strength is ‘indicative’ and that actual coverage may vary based on both device and other environmental factors (with more information available to consumers if they want to ‘Learn more’).
- All our mobile consumers are on ‘open term’ plans,<sup>1</sup> which means that regardless of whether a consumer is on pay monthly or prepay, they already have the ‘right to exit’ our mobile services on a month-by-month basis if they are not satisfied with the service. This includes if mobile coverage issues develop. We do not lock consumers into purchasing ongoing services from us.
- We offer a 30-day ‘network guarantee’ so that new consumers to the 2degrees mobile network can try out our service. We hope they love it, but if for some reason it doesn’t work for them, under this ‘guarantee’ they can receive a refund for the month. (For the subset of consumers that also purchased a device with their plan, they are also able to return the device and get a refund - of course provided they haven’t damaged their device).<sup>2</sup>
- In addition, we understand situations for our customers can change from time to time, and we work with our customers on a case-by-case basis in the event mobile coverage issues do arise.

The above measures are voluntary, but in addition 2degrees comply with the consumer protections of the Consumer Guarantees Act and the Fair Trading Act.

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<sup>1</sup> This is for our residential consumers, and does not include business/bespoke consumers.

<sup>2</sup> Subject to relevant terms and conditions that customers are advised of when they make their purchase. These in part avoid perverse incentives, such as providing a free insurance for the first 30 days. We note outside the 30 day period consumers can still trade-in their phone provided it is in ‘good working order’ and receive some monies, even if they are moving to another network.



Happily, 2degrees are not aware of issues where we make consumers stay with us when we cannot deliver satisfactory coverage. We also do not see issues with our mobile coverage maps as a theme in our customer feedback/complaints: in fact, this would be extremely rare. We also have very limited take-up of our ‘network guarantee’, reflecting that the large majority of our customers are satisfied with our service, including relative to our mobile service competitors.

In the Draft CM Guidelines the Commerce Commission has proposed a large number of prescriptive changes to mobile coverage maps. While our coverage maps haven’t been identified as a particular issue by our customers<sup>3</sup>, 2degrees are happy to review our mobile coverage maps alongside guidelines and make amendments where that is feasible and makes sense.

We note (and as indicated verbally in discussions with Commission staff), we expect there will be further discussions relevant to technical changes, prior to finalisation of the Draft CM Guidelines. It may be that the final guidelines are more outcomes-focussed. **[C-I- C**

**]**. 2degrees can also review supporting information provided to consumers alongside our coverage map as part of this process.

2degrees are also happy to review consumer accessibility to our mobile coverage maps on the ‘customer (marketing and sales) journey’, which the Commission has identified as a potential issue. That said, as set out in more detail below, we think the Commission’s proposed ‘expectations’ in any final guidelines need to be more targeted.

2degrees are supportive of working with the Commission and other mobile operators on further ‘standardisation’ of mobile coverage maps, to make it ‘easier’ for consumers to compare coverage between providers - whilst also recognising the inherent technical limitations and operator differences associated with these maps, meaning the maps shouldn’t be expected to be 100% like-for-like. This includes the proposal for greater consistency of language to describe coverage levels:

- Of course, we acknowledge this will require significant technical discussions with other mobile operators, and this may take some time to agree and implement (with the level of implementation required potentially differing between operators, depending on the changes required); and

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<sup>3</sup> As evidenced by customer complaints, or the lack thereof, on this issue.



- In conducting this work mobile operators and the Commission will also need to be mindful of any potential competition (Commerce Act) issues.

2degrees welcomes further discussion on the proposed exit rights of the Draft CM Guidelines. As for all regulatory intervention, it's important any actions required by the regulator are targeted and proportionate, which includes taking into account the size and scope of the issue, remedies that are already available to consumers, and issues with the proposed remedies - including unintended and unfair consequences.

While we understand the 'intent' of this proposal, we are not clear on the true extent of this issue and the appropriateness and proportionality of the proposed solution. In our view the current guidelines include suggestions that go well beyond what we consider is 'fair' and have significant technical, practical and commercial issues. The proposals also go beyond any international precedent/best practice that we have found to date, and we are concerned the proposed measures will have unintended consequences. We think, without evidence of an issue justifying regulatory intervention, with consumer remedies already available, and in line with overseas, that existing consumer protection measures already in place are likely to be appropriate. We outline examples of specific concerns with the Commission's draft proposal in section 3 of this submission.

We appreciate that this is a consultation process that is designed to receive and adapt to the feedback received on such issues. While we highlight our concerns on this issue at a high level in the remainder of this submission, we are aware the Commission are supportive of constructively working with the industry to understand these issues and we look forward to engaging on these issues in more detail with the Commission in future. To this end we have also appreciated the discussions with Commission staff to date that have clarified that these Draft CM Guidelines will be subject to further discussions and consultation.

To support these discussions, 2degrees has commissioned a joint external expert report from telecommunications specialists Coleago with other mobile network operators. The purpose of the report is to provide an educative view on the challenges of defining, delivering and measuring coverage, to consider what factors are reasonably in the control of mobile network operators internationally, and the approaches to consumer protection and potential 'exit rights' in other markets. We expect to be in a position to provide this report to the Commission later this month.

This submission should be considered complementary to the 2degrees RSQ PC Guidelines submission and the TCF submission, which 2degrees have inputted to and support.



## 2 Product Disclosure for Coverage Maps

2degrees appreciate the Commission’s desire for consumers to be able to make easier comparisons between mobile coverage maps, as well as recognition that there are significant concerns and complexities with providing a ‘single coverage map’ for all mobile operators.

As outlined previously to the Commission:

- Mobile coverage maps are much more complex than fixed maps;
- Mobile coverage maps rely on models that cannot account for all factors that affect real-world performance (which could include trees, buildings, weather, devices, location (including in-building) etc, as well as geography). This means that we cannot and do not warrant coverage at a particular location and clearly identify the results on our coverage map as ‘indicative’ only. We would not want to imply greater accuracy than this.
- Our coverage map model is not the same as the model of other mobile operators – we all have different inputs, including as a result of using different vendors, equipment, link budgets, propagation models, spectrum etc. This means to be accurate, it is not a matter of simply aggregating individual operator maps on a ‘Broadband Map’ or agreeing common terms. In fact, we’re aware this could be misleading<sup>4</sup> and potentially raise competition concerns (for example, were we to share model inputs).
- We are aware that in the very limited cases where there is a combined coverage map overseas, the process has proven difficult and costly, despite being to a lesser standard than was desired by the Commission.

2degrees supported working together further on this, and being realistic about the accuracy, feasibility, resourcing and timeframes of addressing this issue, which will require significant resource to be diverted from existing competitive/commercial workstreams<sup>5</sup>. We appreciate that the Commission has taken this feedback on board and we understand (including from verbal discussions) that the objective for the Draft CM Guidelines is not to require providers to have a consistent way of calculating coverage, but rather enabling consumers to be able to look at maps from different providers side by side and compare the information to make better choices, i.e. “good” coverage on 2degrees, being similar to “good” on One NZ or Spark networks.

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<sup>4</sup> Significant caveats would be required to explain that operator coverage maps are not ‘apples-with-apples’ comparisons.

<sup>5</sup> We acknowledge that the Commission is likely to review the proposed timeframe, which includes a Commission ‘expectation’ that RSPs are compliant with the guidelines within three months following finalisation of the guidelines, following industry feedback.



We agree amending individual coverage maps is more appropriate and feasible. We think there will be some technical complexity as we work through this, but as long as the Commission understands this will not be a 100% accurate comparison – given the inherent differences in the networks and models– and that this could take some time to implement, we think we can make changes to aid better comparison. As previously noted, in conducting this work MNOs and the Commission will also need to be mindful of any competition issues.

In the Draft CM Guidelines the Commission also proposed a large number of changes to individual MNO coverage maps. While our coverage maps haven't been identified as a significant issue by our customers, 2degrees are happy to review our coverage maps alongside the guidelines and make amendments where that makes sense.

We note (and as indicated verbally in discussions with Commission staff, we expect there will be further discussions, relevant to technical changes, prior to finalisation of these draft guidelines. **[C-I- C**

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2degrees are also happy to review supporting information provided alongside our coverage map as part of this process.

We also understand the Commission is keen see coverage maps become more explicit in the marketing and sales journey. 2degrees is happy to review the consumer accessibility to our mobile coverage maps on the 'customer journey'.

We do note however that:

- Coverage maps are necessarily 'indicative'. We are concerned that the Commission suggests consumers should be able to 'rely on' the coverage representations that RSPs make. 2degrees makes it clear that coverage is not guaranteed - experience may differ based on both the device and other environmental factors. It's important to understand what our coverage maps are and what it is appropriate to use them for. They are based on models with assumptions, and not actual experience.
- That the Commission has suggested 'any marketing communication' mentioning mobile coverage or that relates to services that rely on mobile coverage should prominently disclose a link to the RSPs coverage map. This captures a very wide range of marketing communication. It will lead to information clutter, and we are not clear that this is a necessary or proportionate requirement for 'all' forms of advertising. If this suggestion is included in finalised guidelines, we think it would be helpful and appropriate that this is more targeted, for example to where mobile coverage is specifically mentioned in advertising or in the Offer Summary available at the point of sale.



### 3 Consumer right to exit without penalty

2degrees has greater concerns associated with the proposed consumer right to exit ‘without penalty’ and welcome further discussion with the Commission on these proposed exit rights.

As noted above, as for all regulatory intervention, we consider it important any actions required by the regulator are targeted and proportionate. This includes taking into account the size and scope of the issue, remedies that are already available to consumers, the range of remedies available and issues/risks associated with proposed remedies - including unintended and unfair consequences.

While we understand the ‘intent’ of having an ‘exit without penalty’, we have identified a number of concerns. We consider the current draft guidelines include suggestions that go beyond what we consider is ‘fair’ and have significant technical, practical and commercial issues.

#### Justification for regulatory intervention

We are not clear on the true extent of this issue and proportionality of the proposed solution, including due to:

- The existing ability of consumer to exit services if they are dissatisfied:
  - As described earlier, all our mobile consumers are on ‘open term’ plans that mean they can exit their plan on a month-by-month basis.
  - New consumers can also ‘test’ whether our mobile network works for them via our 30-day network guarantee.
- Consumers that have chosen to purchase a device with 2degrees can also leave without being tied to a mobile plan:
  - These customers can ‘exit’ at any time, by either repaying the remainder of the amount owing for their device, or (provided it is in good working order) trading-in their device (for a lower value).
  - Consumers who elect to purchase a phone are advised of the relevant terms and conditions for this when they make their purchase. They have also been subject to a credit check.
  - Subject to terms and conditions (e.g. that they haven’t damaged the phone) these consumers can also access the 30-day network guarantee in relation to their device (i.e. if they have just signed up to 2degrees, with a device, this is available to them).
  - If consumers have been with 2degrees for longer, they can still keep their phone by paying upfront (it can be used on multiple networks), or by trading in their phone (this is not a full refund fee).



- The lack of customer complaints or consumer feedback on this issue:
  - We do not see issues with our mobile coverage maps as a theme in our customer feedback/complaints: in fact, this would be extremely rare. 2degrees are also not aware of issues where we make consumers stay with us when we cannot deliver satisfactory coverage.
  - There is limited take-up of our ‘network guarantee’ reflecting that the large majority of our customers are satisfied with our service.
  - We understand from verbal discussions that the Commission has not done any in-depth consumer research and the ‘problem’ may be tied to ‘anecdotal’ evidence from Fincap and ConsumerNZ. We note this may relate to an ‘affordability’ issue, rather than an ‘exit right’ issue. We do credit check consumers.
- There are alternative remedies available to consumers, including:
  - Working with 2degrees to address the issue. We understand situations for our customers can change from time to time, and work with our consumers on a case-by-case basis if mobile coverage issues do arise.
  - The Consumer Guarantees Act and the Fair Trading Act consumer protections.
- The lack of international precedent/best practice. We note the Commission verbally confirmed they are not aware of any international precedent, including having discussed this with overseas regulators in the UK (Ofcom) and Australia (ACMA).

### **Fairness and Unintended Consequences**

We also have concerns related to the fairness of the proposals on network providers and the potential for abuse of the remedies. For example:

- The reason for the coverage issue may be outside the control of the operator;
- The reason for the coverage issue may be the customer action;
- The operator may not be aware of any issue for the period a consumer claims, because there is no requirement to notify the operator from this time;
- The consumer may have continued to use their phone, including their full plan allowances and would still receive a full refund;
- It is unclear how a ‘material coverage issue’ would be measured and proven;
- The Draft CM Guidelines suggest a consumer could receive ongoing bundled discounts when the consumer is not purchasing a bundled service; and
- The Draft CM Guidelines suggest mobile service providers should provide interest-free finance for devices, for consumers not purchasing a service from 2degrees. There is a cost of this financing for mobile operators.





We note many of the above points could lead to perverse consumer incentives/gaming.

At a minimum, any guidelines would need to set more reasonable expectations. For example:

- An operator should not be liable if the issue is caused by the customer;
- An operator should not be liable for any period prior to notification of an issue;
- Ongoing bundled discounts should not apply. A fairer option could be to waive any ETFs related to the fixed service.
- Operators should not be forced to become a finance company (or provide interest-free loans) on devices for consumers not purchasing a service. There is a significant cost to this for mobile operators.
- There would need to be clear definitions of what constitutes a ‘material’ coverage issue.

Overall, we are not clear there is evidence to support this novel proposed intervention. We would support more research to demonstrate that this is an issue that justifies intervention before proposing, and then considering the relative merits of, proposed remedies.

It may be that the existing consumer activities/protections, as is the case internationally, are most appropriate at this time.