

# **DRAFT Product Disclosure – Retail Service Price and Cost 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 – Retail Service Price and Cost Guidelines’ (**Draft PC Guidelines**).

2degrees is a consumer and competition champion. We strive to provide our customers with great service, and we support Kiwis making an informed choice, consistent with our purpose of ‘Fighting for Fair’.

As we’ve said before, retail service quality is an area that we’re constantly looking to improve, and that we compete on. It’s a reason Kiwis choose 2degrees over our competitors.<sup>1</sup>

Our commitment to fairness and service quality has been recognised in the numerous awards we have received for our retail services. Kantar has recognised 2degrees as not just New Zealand’s fairest telco, but as one of the ‘fairest’ companies in New Zealand.<sup>2</sup> In December 2023 2degrees was awarded the Supreme Champion award by NZ Compare at the annual NZ Compare Broadband Energy and Mobile Awards, as well as awards for Best Mobile Provider, People’s Choice – Mobile, Best Customer Support - Mobile, Mobile Network of the Year and Best Fibre Broadband. 2degrees also won Canstar Blue’s 2023 Most Satisfied Customers for Mobile Monthly Plans award (for the 8<sup>th</sup> time in 9 years).

It’s no surprise then that 2degrees supports initiatives (both commercial and regulatory) that make it genuinely better for consumers to compare and switch services where that’s needed. This is consistent with 2degrees’ long-held support and use of important services such as number portability and comparison websites, and usage/spend transparency to our customers (including via our mobile app and Your 2degrees portals, even prior to the Commission’s mobile transparency work).

In the context of the Commission’s RSQ work, the Commission has considered potential consumer issues and remedies for the sector regarding the product disclosure of price and cost, and published detailed draft guidelines setting out proposed remedies. We have also discussed these with Commission staff.

Overall, 2degrees support the objectives of the Commission - to ensure consumers have a good customer experience, and that they understand and can compare telecommunications services/products that they may be signing up too. 2degrees prides itself on what it does to support customers through their ‘customer journey’. We also agree that further changes can be made to support even better ‘retail service quality’ and we are happy to work with the Commerce Commission, and the TCF as

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<sup>1</sup> This focus aligns with both the 2degrees and former Vocus brands, which officially announced they had ‘merged’ on 1 June 2022. We are continuing to progress our transition programme.

<sup>2</sup> Kantar Corporate Reputation Index, 2023.



relevant, in relation to further potential initiatives supporting retail service quality where that's appropriate.<sup>3</sup>

As set out in this submission:

- 2degrees supports monthly pricing and considers that the Commission's proposal that average monthly prices are provided over a 12 month period is more appropriate than the 24 month period previously considered. 2degrees has been a strong advocate for 'Monthly' pricing, as highlighted in our 'Unfairuary' campaigns, and already provide a summary of monthly payments for our plans at the point of sale.
- Overall 2degrees support the intention of a minimum cost summary, however we are keen to further explore how best to address this issue, including in a way that does not unintentionally mislead consumers. 2degrees already have customer friendly checkout summaries for mobile and broadband plans and these can be further developed.
- 2degrees support the updating of plan offer summaries and will work with the TCF on developing changes to the fixed offer summary and introducing new mobile offer summaries.
- 2degrees already discloses the application of Early Termination Fees (ETFs) in its marketing where these apply and is looking into how to best improve consumer accessibility to ETFs where that is needed.

While agreeing with the overall objectives of the Draft PC Guidelines in principle (and as outlined verbally in meetings with Commission staff), 2degrees has comments on the appropriate application and practical implementation of some of the measures outlined in the Draft PC Guidelines.

- **In some cases we consider the objective of the proposed requirements can be better achieved through alternative means.**
  - We understand the Commission has tried a different format for this consultation, and recognises it has published 'guidelines' more in the form of a 'code' with specific remedies rather than at a more objective/principle level. We appreciate the Commission is keen to receive feedback on this approach.
  - 2degrees considers it is important to understand and be able to comment on the principles and scope behind any regulatory intervention (including why particular solutions might be adopted and understanding the 'evidence' of the issues). This may better assist targeting the problem, ensuring any regulatory solution is

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<sup>3</sup> Consistent with regulatory best practice, and our long-held position, 2degrees supports the ability for competition to address issues, with any relevant regulatory intervention being based on evidence, proportionate and targeted to the issue identified, with consideration of pros and cons of solutions and avoiding competitive harm (including unintended regulatory harm).



proportionate and potentially leading to different and more appropriate solutions.

- 2degrees also note that the guidelines in the current format appear to have led to increased prescription in how issues should be addressed that, in totality, might not be appropriate from a practical/operational consumer experience/customer journey perspective. We do understand this is just a draft proposal.
  - In general, and consistent with our support for competition and innovation, we don't think the Commission should be too prescriptive in how it asks RSPs to display information in marketing to their consumers (which is on top of other legislative and regulatory consumer protections already in place).
  - It may be useful for the Commission to map the requirements operators must comply with, including existing legislation, regulatory requirements, Codes and Guidelines, to ensure there is not duplication or misalignment in new requirements being imposed, and any proposed solutions to problems identified are streamlined where possible.
- **The proposed timeframe, which includes a Commission 'expectation' that RSPs are compliant with the guidelines within three months following finalisation of the guidelines, is unrealistic.**
    - As identified in this submission and verbally to Commission staff, the proposed changes as set out in this draft require significant changes to business processes and publications, which cannot reasonably be made within this timeframe.
    - This proposed changes would also require significant resourcing to be diverted from existing work streams that we have in place as part of the commercial/competitive marketplace. This includes initiatives to improve consumer experience and for 2degrees, substantial migration/transition work related to our recent 'merger' that will help support ongoing consumer experience across all brands.
    - In addition we note that – in line with the purpose of consultation – the draft proposals can be expected to change following feedback. Given the impact on resource on consumer enhancing activities and cost, it does not make sense to make changes that final Commission guidelines may require revisiting.
    - We acknowledge that the Commission has verbally indicated this timetable is an 'expectation' rather than a requirement. However, for the final guidelines we think it's only right that the Commission adopt reasonable expectations in line with feedback it receives. 2degrees works hard to meet the Commission's expectations.

2degrees appreciates that the Commission is seeking stakeholder feedback on such challenges and we welcome and support this approach. Further, we understand from our verbal discussions that the Commission may issue a further draft and/or conduct



further work on relevant issues if this is considered necessary following this round of consultation.

In the remainder of this response 2degrees set out comments on each of the Commission's proposed sections of its Draft Product Disclosure – Retail Service Price and Cost Guidelines:

- Comparing prices (Section F of the Draft PC Guidelines);
- Comparing minimum total costs (Section G of the Draft PC Guidelines);
- Comparing plans across RSPs (Section H of the Draft PC Guidelines); and
- Awareness of Early Termination Fees (Section I of the Draft PC Guidelines).

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

## 2 Comparing prices

### Section F: RSPs should make it easy for consumers to compare the relative price of plans)

2degrees is supportive of service providers adopting a monthly standard pricing. This is a standard period of time that is relevant to contracts of multiple durations. As we've said before:

- 2degrees share the Commerce Commission's concerns that consumers may get confused between offerings of different length, for example plans of 28 days rather than monthly, so that there are 13 rather than 12 billing cycles in a year. We agree with the Commission that 'monthly' pricing this would make it easier for customers to make comparisons between plans (while recognising that price is not the only factor in a purchase decision).<sup>4</sup>
- 'Monthly' is something that the Commission is aware 2degrees have been a strong advocate for in the mobile market, including with our 'Unfairuary' campaign<sup>5</sup>;
- 'Monthly' is already the standard period of time used by the industry for fixed broadband; and
- 2degrees provide minimum monthly costs for our products.

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<sup>4</sup> As we've noted before, while price is important, it's just one factor.

<sup>5</sup> See, for example: <https://stoppress.co.nz/news/2degrees-continues-asking-kiwis-if-their-telco-is-charging-them-for-a-13th-month/>.



While 2degrees are not clear ‘average’ monthly costs (versus just ‘monthly’ costs) are required, we understand the Commission’s desire to have this pricing over a specific standardised time period. As such, given a time period is being selected 2degrees support the Commission’s draft proposal that average monthly pricing is over a 12 month, rather than the previously suggested 24 month, time period.

As indicated previously to the Commission, 2degrees had particular concerns with averaging prices over 24 months, given it could undermine competition and be misleading for consumers. We think 12 months is a more ‘intuitive’ and standard timeframe that is less likely to mislead consumers, it is consistent with the Commission’s previous approach to the mobile market, it is consistent with the majority of plans that are not ‘open term’<sup>6</sup>, and it does not encourage the ‘locking in’ of consumers to plans for 24 months.

While we support average monthly pricing over 12 months being available for consumers, we have identified some concerns with the detail of the proposed approach. In particular:

- **The need to display this in “any” marketing communications that includes the plan price**, which would including advertising such as billboards, digital display, radio and TV/video, rather than our website and in-store where more details and actual purchases are made:
  - We think it’s important to ensure that consumers are aware of what they are signing up to, and understand a concern where consumers may be provided a low headline price but the average monthly price is significantly higher, however, not all operators market like this and to avoid information ‘clutter’ and support competition we encourage the Commission to consider targeting this ‘regulatory expectation’ to where this concern applies.
  - This could be limiting where this information must be displayed (e.g. to point of sale) or limiting the requirement to where the ‘average monthly price’ is higher than the headline price advertised. This may encourage ‘better’ marketing.
  - Notably, 2degrees already markets its products and services in a way that we consider ‘fair’: for example, rather than using ‘headline’ short-term lower monthly prices 2degrees often headline the (higher) ongoing monthly price and advertise that a short term discount applies to this, e.g. displaying the non-discounted monthly price, with “50% off the first 6 months”. This does not lead consumers to think they are paying a lower discounted fee on an ongoing basis. We are not aware of consumer issues with this approach, and our teams are concerned at a regulatory compliance requirement applied to marketing – as opposed to a competitive/commercial marketing choice - that requires the provision of additional information that could create customer confusion and is inconsistent with our ‘keeping things clear and simple’ approach. It appears to

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<sup>6</sup> Recognising there are a limited number of both 6 month and 24 month plans.



be imposing requirements on all operators, regardless of whether their advertising gives rise to concern.

- **We do not support ‘mandatory upfront charges’ being added to the ‘average monthly price’.** While we understand the intent of including ‘mandatory upfront charges’ here:
  - We consider this will be misleading, as the ‘mandatory upfront charge’ may be spread over a different time period.
  - This will create ‘messy’ advertising/clutter, inconsistent with our keep it simple approach (for example, depending on the service, requiring decimal places to be added to ‘average monthly’ fees; potentially requiring multiple additional plans (for example, depending on whether a customer has a BYO modem).
  - We note it is standard across multiple sectors for purchases to include shipping charges in the checkout summary.
  - Having mandatory upfront charges set out separately in the ‘minimum total cost summary’ addresses these issues. We note this information will also be available to consumers in the relevant Offer Summary.
- **The requirements of these ‘guidelines’ should not apply to business.** It is clear as we have worked through these Draft PC guidelines and consumer research undertaken by the Commission that the Commission has been focused on residential consumers. While we think that’s the right focus, we note the Commission’s current definition is wider than residential consumers. We do not think it is appropriate or in line with the residential consumer evidence collected to impose these guideline requirements on business (which includes SME, Corporate, Government and bespoke/customised plans/services). For example, we do not consider a Commission expectation of GST inclusive prices for our business customers is appropriate or in line with their feedback or advertising standards. GST exclusive pricing is the norm and the default expectation for business, trade or wholesale consumers across multiple sectors. We consider the Commission should clarify that these guidelines only apply to residential consumers in the next iteration of these guidelines.

### 3 Comparing Total Costs

#### Section G: RSPs should display the total minimum cost of an offer to make it easy for consumers to compare minimum total costs between offers.

2degrees understands the intention of the Commission’s proposal to transparently provide consumers with a total minimum cost summary. While this is not a complaint theme raised by 2degrees customers, nor a common requirement internationally, we agree it is important that consumers understand what costs are associated with purchases they are making at the point of sale.



To this end, 2degrees currently provide our customer's visibility of cost breakdowns, for example in the checkout summary (as well as references to the full contractual details/terms and conditions the customer actively signs up too, in addition to the key terms and conditions applicable to the relevant offer). These cost breakdowns indicate both any applicable upfront fees (e.g. for modem and shipping fees) and any monthly recurring payment, breaking down different components further as applicable (e.g. plan, device).

We also provide our customers broadband offer summaries in accordance with the current TCF Broadband Product Disclosure Code and, as we outline in section 4 below, we expect to provide offer summaries for our mobile consumers in future.

That said, we do have concerns with the Commission's proposed 'minimum' total cost summary:

- **Providing a 'minimum' total cost summary over 12 months for 'open term' customers could be incorrect and misleading for many consumers.**
  - It is actually incorrect to describe the 'minimum' total cost for consumers on these plans as including the amount it would cost them if they stayed 12 months as these customers have the flexibility to cancel their services in less than 12 months. The minimum cost would only include one month of the service (and any applicable one-off fees).
  - We note that many of our fixed plans and all of our mobile plans are 'open term'<sup>7</sup>. For a large number of our consumers the minimum total cost is their monthly plan fee (already set out in the plan card, as well as in the current form of our check out summary).
- **Even if a customer is not on an 'open plan' term, their 'minimum' costs can and do change over time. For example:**
  - Due to plan changes.
  - Due to different bundled services, which would need to be disclosed transparently.
- **Minimum total costs for consumers opting for a mobile device repayment plan do not include service costs over the customers selected payment period:**
  - We acknowledge a subset of our mobile consumers have chosen to purchase a new device interest free over time with their plan for a period of their choice (e.g. 12 months, 24 months, 36 months, with the period determining the payment level).

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<sup>7</sup> Other than corporate arrangements that generally include a term.





- We note the minimum total cost for these consumers is not the cost over the payment term they selected (e.g. 36 months as per the Commission’s example), but costs related to the device (based on RRP) plus only one month of the service plan. These consumers are not locked into a long-term plan and it would be misleading and false to suggest the minimum cost includes this.
- **Practical implementation issues:**
  - Proposed changes also require IT Build changes that our teams would need to work through, on multiple systems. This should be expected to take a significantly longer period than three months.

We would like to better understand the extent of this issue identified by the Commission, and the evidence supporting that it is an issue, so to ensure a proportionate solution to the alleged issue identified, including given other information provided to consumers. We note that the above concerns mean that if, following consideration of the issues, a minimum total cost summary is required, more information and caveats are likely to be required to ensure we are not confusing or misleading our customers and unnecessarily increasing industry costs.

## 4 Comparing RSP Plans

### Section H: RSPs should make standardised offer summaries available to consumers for all plans

2degrees support the principle of making comparisons easier for consumers and support working as part of the TCF to better standardise offer summaries.

As noted in our previous submission, our key concern with comparisons is that they are fair, do not mislead (for example by implying like-for-like comparisons when they are not), do not confuse customers or unintendedly harm competition (including through the reporting on factors that are not relevant to their use) and that any potential implementation requirements associated with intervention - which have resource and cost implications - are proportionate.

2degrees supported the current TCF Broadband Product Disclosure Code, which requires operators to set out an extensive agreed set of key terms to support consumer comparison of broadband products. This includes information on service descriptions, availability, service charges/allowance, additional charges, set up charges, other charges, the minimum contract period, any applicable early termination fee, the notice period, other requirements, traffic management, service restrictions, the fair use policy, effects on other services, the complaints process information and disputes process information.<sup>8</sup>

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<sup>8</sup> While this is an industry code, both MBIE and the Commerce Commission were engaged during the development process and input and supported it.



The Commission (including verbally) has identified further potential improvements to the offer summary, including greater consistency of format across operators. 2degrees agree that these can be considered as part of the TCF Broadband Product Code review process that is currently underway. We also agree with the Commission that encouraging operators to make offer summaries easier to find across different operator websites would be a useful part of this process.

In addition, 2degrees is supporting the TCF consideration of introducing new mobile offer summaries.

There are some issues in the practical implementation of the Commission's draft proposal that we have identified and highlight to the Commission below. To address these issues we would support the Commission adopting a less prescriptive approach as it works to finalise these 'guidelines', allowing these issues to be further considered by the TCF (including the TCF Broadband Product Disclosure working party, with input from the teams that need to implement requirements in practice). In particular:

- The Commission has suggested a separate Offer Summary should be available for 'each' plan. Currently, 2degrees provides an Offer Summary by technology, given limited differences to the Offer Summary between plan. We are aware that having an Offer Summary 'per plan' will significantly add to the amount of documentation consumers would need to look at if they are comparing plans within RSPs and between RSPs, and of issues related to the complexity/length of webpages that already have a significant amount of information that needs to be provided (including as required by the Commerce Commission). We understand a concern of the Commission may be similar formatting across RSPs. While we understand 'per plan' may be in line with Australia we are not clear this is wide international precedent and we would support consideration of whether separate or an alternative standardised format across RSPs is preferable for the purposes of the objective.
- The Commission has proposed both 'at a minimum' content requirements and extensive 'other' expectations of content for an Offer Summary, as well as specifying an Offer summary should 'be no more than two A4 pages' and that it must 'be accessible to people with vision impairments, including being written in a machine-readable format, with appropriate font, font size, and colour contrast ratios.' 2degrees understand the intent of the Commission's proposal, however note that this may not be practically implementable. In line with the TCF submission on this matter, we are concerned that it is not possible to include the information set in the form requested.
- The Commission has proposed that providers should be required to send personalised offer summaries to consumers after the point of sale, and has subsequently clarified verbally that this is intended to be the standardised Offer Summary relevant to the plan the customer purchased. In line with the TCF submission, it is not clear that this is necessary or the best solution to address the apparent concern, given lack of evidence as to whether this is an issue, other information already available to the consumer (including both at the point of sale and



online), and the added costs of doing this. While the draft Guidelines indicate the intention of this clause is to provide the customers with a record of the plan they have purchased, we note consumers already have access to both the checkout summary and Offer Summary (which for ‘2degrees’ can be downloaded from our website).

## 5 Prominently disclosing ETFs

### Section I: RSPs should make consumers aware of any early termination fees that apply to their offers

2degrees support ensuring consumers are aware of applicable early termination fees (ETFs) where these apply. We already strive to ensure transparent communication of ETFs by disclosing whether these apply in our marketing communications. These are also provided at the point of sale and in offer summaries where applicable.

The Commission has proposed greater ETF detail in the Offer Summary, including the cost formula, where applicable. 2degrees are happy to look at this, as part of the TCF offer summary development process.

The Commission has also proposed that ETFs should reflect the actual loss to the RSP of a consumer terminating a fixed term contract early. From verbal discussions with Commission staff, we understand this is to line up with FTA discussions. Given the FTA applies, we recommend that this requirement is not included in the guidelines.

2degrees have also identified concerns with the proposal of the Draft PC Guidelines that providers be required to include specific information about ETFs on customer invoices. This proposal is potentially costly and complex to implement, requiring changes to multiple systems, and we are concerned it will confuse consumers driving a poor consumer experience. Invoices set out the amount payable. We are not clear adding an amount not payable to an invoice is the right way to go to address the issue identified. We consider any Commission guidelines on this issue should not be so prescriptive on the ‘how’, but allow flexibility for providers to determine how to achieve the intended outcome in the most appropriate way for their customers.<sup>9</sup>

That said, 2degrees do understand the underlying concern of the Commission, and are happy to consider whether there are better, alternative means to show any applicable ETFs to relevant consumers in a ‘2degrees’ way. For example, this includes consideration of whether this would be possible on the 2degrees Self-Care Portal and/or the 2degrees app.<sup>10</sup>

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<sup>9</sup> We also note that the Commission has indicated it will be separately considering bill issues in 2024/2025. It seems sensible and more efficient that any Commission requirements/expectations for bills are considered together rather than ad hoc.

<sup>10</sup> [C-I-C



We note that any such changes would require significantly more time than three months to implement, requiring a complex IT and design build. In addition, following 2degrees' recent 'merger' **[C-I-C**

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