



**TCF Submission to
Commerce Commission
Measuring Broadband New Zealand
16 March 2022**

A. Introduction

1. Thank you for the opportunity to comment on the Commerce Commission's Measuring Broadband New Zealand (MBNZ) Review 2022 (the Review).
2. This submission is provided by the New Zealand Telecommunications Forum (TCF). The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand's telecommunications customers. The TCF enables the industry to work together and to discuss issues and topics collaboratively, to reach acceptable solutions that can be developed and implemented successfully.
3. The TCF supports the aims of the MBNZ programme to monitor and report on broadband performance in New Zealand. The programme is now well established in the telecommunications sector and the TCF looks forward to the development of the programme in the future phases outlined in the Review.
4. For reasons of expediency, we have kept our comments to the specific questions asked in the Review paper but are prepared to elaborate on any of the points raised.

B. Responses to specific questions

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

5. Generally, the TCF supports the proposed adjustments to the MBNZ programme that the Commission has identified and described in cl. 62 of the Review.
6. Further comment on each of these points are set out below:
 - i. Greater coverage of broadband providers is important and access to the MBNZ programme must be based on an equivalence principle. The TCF supports that the Commission develops a transparent process for onboarding new providers which should encourage participation.
 - ii. The ability to assess the in-home Wi-Fi performance: TCF members will provide their views on the proposal to assess the in-home Wi-Fi performance individually. The TCF's more general view is that the Commission should, at a minimum, develop a consumer education tool to help consumers understand that the speed data published by MBNZ will differ from the actual speed performance consumers experience in their homes due to individual Wi-Fi performance and issues that may be outside of their provider's control (e.g., home set up or equipment specifications). This would help consumers self-diagnose issues before contacting their provider. In addition, this is a principle that is included in the Commission's guidelines on marketing of alternative services and it should therefore be followed by MBNZ to avoid consumer confusion. The output could provide some useful insights into general consumer issues with Wi-Fi performance that providers could build into their customer troubleshooting processes.
 - iii. The TCF supports expanding the scope of testing to other technologies emerging such as 5G fixed wireless and satellite, and expanding existing 4G fixed wireless reporting to include breakdowns by provider.
 - iv. The TCF agrees with increasing reporting by geographical breakdown to support consumer choice. This generally could yield useful observations across the sector on broadband performance comparison between rural and urban communities.
 - v. Ability to test services with a greater than speed of 1Gbps is an important inclusion with the rollout of higher speed fibre services across New Zealand. However, immediate focus should be on investing into measuring services that are more widely used by consumers.
 - vi. As a principle, the reduction of scope for legacy products is supported however, the TCF does not support reducing copper reporting in the immediate future, given it still has the second highest connection type. Overtime, as it reduces, it would make sense to reduce reporting/sample size proportionate to the market share (e.g., as per the Commerce Commission's Annual Telecommunications Monitoring Report). A business rule could be developed based on market share that would allow reduction of scope or removal based on an agreed threshold of customers receiving a particular service. For example, X number of current ADSL customers would need to be reduced by Y% before the service was removed from the programme. Reporting could be reduced to a technology rather than provider / plan level and results must remain statistically valid, not to compromise the reporting.

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

7. The TCF supports a robust onboarding programme that provides equitable and affordable access for all providers. Other testing providers should be proactively invited to deliver testing if MBNZ is unable to expand the scope of its own testing to other technologies emerging such as 5G fixed wireless and satellite.
8. The Commission is best placed to consider how that principle would apply by consulting directly with a range of providers operating in New Zealand.
9. Some consideration would need to be given to statistical scaling and validation if options such as allowing smaller sample sizes, particularly for smaller providers only operating within one region of New Zealand, are implemented and how comparison of services would be presented against nationally represented providers with larger sample sizes.
10. We also reiterate the Commission's concern about applying different reporting thresholds made in cl. 67.3 *"This approach would need to be carefully managed when reporting the result to ensure indicative performance does not mislead consumers."*
11. The TCF does not support any reporting that compromises the statistical validation of the data which could undermine the reporting.

Q3. Should we encourage greater collaboration between the testing provider and the broadband providers to facilitate the testing of new products?

12. In short, yes, this could provide a viable option to fill a real gap in the current programme whereby new plans and services are emerging but there is a period of time between launching and the MBNZ programme recruiting enough volunteers to be able to report against the plan or technology.
13. Permitting commercial arrangements between providers and the MBNZ test provider could allow for a more dynamic and short-term option for providers who are required to substantiate the speed and performance of their plans which are not yet in scope of MBNZ.
14. However, there would need to be some robust principles set against this option. For example, providers should not be pressured into establishing a commercial arrangement if a gap in their product suite exists or the data must not be shared or published by the test provider without the provider's consent which would be established as part of that commercial arrangement.

Q4. What options should we consider, to recruit and maintain volunteers to support greater coverage of products, providers and plans?

15. The TCF does not support the introduction of a regulated requirement (cl. 67.1). This could result in unintended consequences and become burdensome for providers. There are many other steps the Commission could investigate before regulatory intervention is adopted and the TCF does not see the evidence that the regulatory intervention threshold has been met.

16. The TCF would support a MBNZ goal that could allow providers to take an active role in volunteer recruitment and incentivising uptake of the programme if they wish to and in a way that best fits with their customer service delivery.
17. Allowing providers to source volunteers and carrying out testing with the MBNZ provider also fits with our previous statement on the ability for providers to establish commercial arrangements with the test provider. However, embedding an obligation to provide these results to the Commission is not supported without some clear guidance and thresholds on when that data 'should' be provided. For example, the test sample may not be large enough to be validated against the MBNZ programme, the plan or technology is still in its infancy or the commercial testing scope may differ from the Commerce Commission MNBZ testing programme.
18. The Commission should expand on its own consumer promotional campaigns, particularly on the positive reasons why becoming a volunteer could be a good option for consumers and the benefits they may receive i.e., having the ability to troubleshoot and monitor their broadband service. The Commission should allow inclusion of some value-based incentives (e.g., voucher or discount) as an option where volunteer numbers are low and providers should be transparent as to the conditions that attach to this.
19. Finally, the current test provider, SamKnows, has a wealth of experience across a number of jurisdictions. The TCF would encourage the Commission to investigate what programmes the test provider has seen work to promote testing programmes that have successfully increased volunteer participation.

Q5. What level of support should providers offer to the programme and to volunteers to promote the programme?

20. Feedback from our members who are currently involved in the scheme noted that the current programme is too inflexible. For reasons such as; providers are not allowed to offer incentives, and the lack of information sharing between the test provider and network operator can make running a seamless recruitment campaign more difficult.
21. There is no evidence on the lack of willingness by providers to participate in the programme, which is another reason why regulatory intervention would not be the right solution. Willingness is likely to increase even more now that providers will be significantly reliant on MBNZ reporting for their broadband marketing purposes, requirements which are set out in the TCF Broadband Marketing Code.
22. To consider this question further, the TCF suggests that the Commission clarify what it means by 'level of support' as this could be interpreted many ways and therefore possible solutions not presented through this consultation process.

Q6. Should we consider applying different reporting thresholds for some testing, for example smaller sample sizes, where it has been difficult to get enough volunteers?

23. This has been previously covered in this submission refer to cl. 9, noting again that changes to testing thresholds must not compromise the statistical validation of the data which could undermine the reporting.

Q7. How often do you think we should report test results? Why?

24. Increasing the reporting schedule may achieve the Commission’s goal of providing more up-to-date performance information for consumers, but this is only successful in how the information is being delivered. It is also important to consider that providers will be required to publish the particular report they have used in their own marketing.
25. As noted above, providers have obligations to ensure their marketing of performance and speed is in-line with recent MBNZ reporting. It is not feasible to update online and print marketing on a monthly basis and to the other extreme, by not having consistent reporting dates also makes it difficult to prepare and plan for changes to this type of marketing material.
26. The TCF would question whether more regular reporting would achieve the second goal of providing “*greater incentives for providers to address any performance issues.*” (cl. 69) Has the Commission gathered evidence to indicate that there is enough of a variation in the current reporting cycle to warrant increase in reporting or received feedback from providers seeking more regular reporting on their plans with the purpose to address any performance issues?
27. Consideration should be given to where the Commission will get the best value for money, particularly if more frequent reporting is a significant cost increase to the programme. Investment could be better spent on recruiting more volunteers and testing other technologies for example.
28. There is a balance somewhere in the cycle of publishing reports and publishing data through its online dashboard or other consumer reporting channels the Commission may develop.
29. At a minimum, the TCF recommends that the report schedule is more consistent to support providers to substantiate their speed and performance claims for consumers, which is an important objective set out in the Commission’s own Guidelines to the industry published 8 November 2021.

Q8. What changes should we make to our current testing and reporting to better support consumer choice?

30. We understand that the purpose of the programme is to measure very specific performance characteristics of a product (i.e., speed, latency etc). However, when reporting these results in the MBNZ quarterly reports, it is important to frame the results in a way that recognises that technical performance is not the only feature that matters to consumers. The Commission could play a more active role in educating consumers about the various factors to consider when choosing a broadband product (e.g., speed, price, availability, usage requirements).
31. Beyond expanding the MBNZ programme as previously discussed, the Commission should do more on educating consumers on what can affect in-home performance that is within the consumer’s control and developing more consumer focussed channels to present their MBNZ information. This would help achieve the Commission’s goal of supporting consumer choice.

Q9. What are the practical, technical or commercial implications for providers of moving to an embedded software-based testing approach?

32. New Zealand is a small telecommunications market in comparison to Australia or the UK. As a result, getting manufacturers to embed a specific software into the modems made for New Zealand operators would be a challenge and have significant cost implications.
33. This model only works for providers who deliver their own modems, but it wouldn't work for those providers who operate on a BYOD model so potentially would exclude some consumers and providers.
34. Before implementing this approach, a robust project to investigate and assess the viability of such an option in New Zealand would be required. The TCF would encourage the Commission to complete a feasibility study before embedded software-based testing is even considered a real option to be mandated on providers.

Q10. What implications would an embedded software-based testing approach have for licensing for modems/third party firmware, warranties, network load and modem capability?

35. The TCF views are covered under the previous question but we also suggest that a feasibility study should include information from other jurisdictions that utilise this type of technology; this would be helpful to providers.
36. There could be some big implications on licensing of modems, warranties, modem capability and network load, which have not been considered in any detail by providers operating in New Zealand.

Q11. What implications does this approach have for privacy and trust for consumers and providers? What safeguards would need to be in place to ensure the privacy of consumer data including cybersecurity and privacy of consumer details?

37. Again, the implications of the approach are not fully understood and there is not enough information to make informed or detailed comments on this option provided in the Review.
38. The TCF would support the Commission carrying out a detailed feasibility study, including risks and benefits and report back to the sector. Points that should be included in scope of this study are, but not limited to:
 - i. Consumer consent.
 - ii. Understanding of how this option would fit into other New Zealand regulatory obligations such as the TIPC and Privacy Act.
 - iii. Alignment to the MBIE CDR legislative framework.
 - iv. The impact on provider's retail terms and conditions and any future planned next generation modem rollout programmes.

C. Sustainability

39. A side point to raise with the Commission is about the environmental sustainability of the test equipment provided to consumers i.e., MBNZ white-box.
40. In 2020, the Ministry for the Environment identified priority products for product stewardship which meant manufacturers, importers and sellers of priority products must belong to an

accredited, mandatory scheme aligned with the 2020 Guidelines for Product Stewardship Schemes for Priority Products¹ (the Guidelines) pursuant to the Waste Minimisation Act 2008² (the Act). It seeks to have one accredited scheme for each category of priority product.

41. Priority products covered by the legislation include “small IT and telecommunication equipment (no external dimension more than 50cm)”³.
42. The obligation to responsibly recycle the equipment falls onto the provider of the equipment and the consumer must not bear any of the cost of this process. The provider must also participate in a relevant accredited recycling scheme as part of its obligations. The Commission in this scenario would have responsibility to participate in an accredited scheme as it contracts the test provider who supplies the test equipment to the consumer, even in the scenario that the retail service provider has recruited the consumer for the purposes of the MBNZ programme.
43. The TCF is currently in the process of a re-accreditation project for the Re:Mobile Recycling scheme under the new requirements of the Act. Part of the scope of this project is assessing whether other telecommunications customer equipment should be included to ensure the sector meets its obligations i.e., modems and ONTs. We would be happy to discuss this further with the Commission and answer any questions it may have regarding the obligations under the Act

D. Conclusion

44. The TCF agrees with the Commission’s observations on the limitations of the current MBNZ programme described in cl.44 – 50 of the Review.
45. The TCF supports a number of the proposed solutions to addressing these limitations and have commented on these in this submission.
46. The TCF sees the value of the MBNZ programme, the willingness in providers to participate and supports the expansion of the programme to be more widely accessible to providers on an equitable basis.
47. The TCF considers the MBNZ programme as an integral part of supporting the objectives set out in the TCF Broadband Marketing Code and it is important that all parties who present broadband information to consumers align in how that is presented to avoid market confusion, including the Commission.
48. The Review is a positive step forward in continuing to support and educate consumers whilst also supporting providers of broadband services to deliver improved outcomes to their customers.
49. The TCF is available to answer any questions regarding the views or information presented in this submission.

¹ [General Guidelines for Product Stewardship for Priority Products Notice 2020 Declaration of Priority Products Notice 2020](#) and [Directive of the European Parliament 2012](#)

² [Waste Minimisation Act 2008](#)

³ Annex III of the [EU Directive 12/19/EU](#)