

27 May 2025

PRJ0047483

Two Degrees Mobile Limited
Level 2, 136 Fanshawe Street
Auckland 1010

Attention: [REDACTED] Directors

By email only: [REDACTED]

Dear Sirs,

Fair Trading Act 1986: Warning from the Commerce Commission for misrepresentations and/or unsubstantiated representations about 2degrees' satellite to mobile service

1. The Commerce Commission (the **Commission**) has completed its investigation into Two Degrees Mobile Limited (**2degrees**) under the Fair Trading Act 1986 (**FT Act**) for representations made in its "No Giant Wait" advertising campaign (the **Campaign**).
2. The investigation considered whether 2degrees made false, misleading and/or unsubstantiated representations in the Campaign about the launch date and the nature of its satellite to mobile service (the **investigation**).
3. After fully considering the relevant information received, the Commission considers that 2degrees has likely breached ss 11, 12A and/or 13(e) of the FT Act.
4. In this instance, the Commission has decided the appropriate enforcement response is to issue 2degrees with a warning, rather than commence criminal proceedings. The Commission notes that only a Court can determine whether there has been a breach of the FT Act.
5. The purpose of this warning is to inform you of the Commission's views on why there has been a likely breach of the Act and to encourage future compliance. Legal action remains available to the Commission in future if the conduct continues or is repeated.

Details of the Commission's investigation

6. The Commission investigated allegations that 2degrees misled consumers in the Campaign when it advertised the launch of its satellite to mobile service. The representations investigated were:
 - 6.1 that 2degrees would be launching a satellite-based service within the 2023 year (**Launch Date Claim**); and
 - 6.2 that the service will provide "*satellite coverage*", including "*text coverage for 100% of New Zealand*" (**Service Claim**).
7. During the investigation, the Commission obtained and considered the following information:
 - 7.1 a complaint about the 2degrees Campaign;
 - 7.2 copies of the representations made in the Campaign;
 - 7.3 information and documents supplied by 2degrees in response to voluntary requests for information on 18 July, 18 October, 14 November and 29 November, and a voluntary interview on 15 November 2024, including:
 - 7.3.1 information and documents from Lynk Global (the satellite communications company 2 degrees was partnering with) (**Lynk**) about the satellite service, including key dates for the provision of services and limitations with the initial service;
 - 7.3.2 internal communications within 2degrees about the Lynk agreement, the service to be offered to customers, and the Campaign for the satellite to mobile service;
 - 7.3.3 information about the scope and reach of the Campaign, including copies of the adverts; and
 - 7.3.4 correspondence with Lynk and 2degrees' advertising agency about the proposed Campaign.

Details of the relevant law

8. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services:
 - 8.1 s 11 prohibits those in trade from engaging in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services.
 - 8.2 s 12A prohibits those in trade from making an unsubstantiated representation. A representation is unsubstantiated if the person does not

have reasonable grounds for making the representation at the time it is made, irrespective of whether it is false or misleading.

- 8.3 s 13(e) prohibits those in trade from making false or misleading representations that services have particular performance characteristics, uses or benefits.

The Commission's view

9. The Commission's view is that there is sufficient evidence to establish that 2degrees likely breached ss 11, 12A and/or 13(e) of the FT Act. The reasons for the Commission's view are set out below.

The Campaign

10. The Campaign took place in May 2023 and made representations on:
- 10.1 billboards around Auckland for six days from 15-21 May 2023;
 - 10.2 the New Zealand Herald website via a takeover banner for one day on 18 May; and
 - 10.3 the 2degrees website from 12 May 2023.
11. The billboards and online New Zealand Herald advertising made the following claims in reducing font size:
- "No giant wait"
 - "Satellite coverage launching this year, not next."
 - "Text coverage for 100% of New Zealand will be available this year with a direct satellite line of sight."
 - "2degrees/Lynk trials scheduled to begin mid-2023. As more satellites launch, coverage will be available more consistently. More info on at 2degrees.nz/satellite".
12. The 2degrees satellite website page contained similar representations to the billboards and Herald website.¹
13. An example of the billboard is included as **Attachment One**.

¹ The website headline stated "*satellite connectivity*" rather than "*satellite coverage*". The qualifying information on the website was updated at various points from 10 July 2023 to disclose the limitations of the text service 2degrees was launching, and that it would not be instantaneous texting and subject to limitations when not in line of sight.

Launch Date Claim

14. The headline claim *“Satellite coverage launching this year, not next”* was made in bold and unequivocal terms. The Commission considers it conveyed that 2degrees was already in the process of making the service available in 2023.
15. The Commission’s view is that this representation was likely misleading and/or unsubstantiated as:
 - 15.1 no testing of Lynk’s satellites had been carried out in New Zealand at the time the representations were made;
 - 15.2 the qualifying information *“2degrees/Lynk trials scheduled to begin mid-2023”*, was in extremely small print and not sufficiently prominent or proximate to correct the impression created by the headline representation;
 - 15.3 information available at the time the representations were made highlighted that the number of satellites that would be available in 2023 was already slipping compared to the launch schedule;
 - 15.4 2degrees’ was aware that developments involving space were prone to setbacks and unpredictability; and
 - 15.5 as of March 2025, 2degrees still do not have a satellite to mobile service, indicating that the technology was in fact a long way from ready.
16. In making the above representations, the Commission is of the view that 2degrees likely engaged in conduct that was misleading as to the nature or characteristics of the service and/or made unsubstantiated representations regarding the launch date of the satellite to mobile service contrary to ss 11 and/or 12A of the FT Act.

Service Claim

17. The qualifying information on the advertisements in the Campaign stated *“Text coverage for 100% of New Zealand ... with a direct satellite line of sight”*.
18. The Commission considers that consumers would understand this to mean they could send a text message in all locations in New Zealand at all times, provided they had a clear line of sight to the sky (e.g. not indoors, in dense bush etc).
19. At the time 2degrees made these representations, it was already aware that the coverage would not be continuous (initially it would only be available for approximately a three-minute window every 2.5 hours).
20. Further service limitations became apparent following the commencement of the Campaign, including that:
 - 20.1 the service would not cover 100% of the landmass of New Zealand as the satellites would use ‘spot’ mode rather than ‘sweep’ mode. This meant the

connection to each satellite would be limited to confined areas (eg Nelson area) rather than the country as a whole; and

- 20.2 there would be a delay of 50 minutes to send a text message due to the lack of a ground station in New Zealand, as the text messages had to pass through a ground station in Hawaii before they could be delivered to the recipient.
21. Whilst there was some further qualifying information provided about the coverage becoming more consistent as more satellites are launched, the Commission considers that this qualifier did not adequately disclose the significant limitations with the service.
22. The Commission therefore considers the “*Text coverage for 100% of New Zealand*” representation was likely misleading as the limitations meant that the satellite to mobile service that would be provided (even if it had gone ahead in 2023), would be materially different from that advertised, as text coverage would not be continuously available for 100% of New Zealand.
23. In making this representation, the Commission is of the view that 2degrees likely made misleading representations about the performance characteristics of the satellite to mobile service contrary to ss 11 and/or 13(e) of the FT Act.

Defences

24. The Commission considered whether any of the defences under section 44 of the FT Act would potentially be available to 2degrees in the facts and circumstances of this case. In particular the Commission considered the defence under s 44(1)(b) that the contravention was due to reasonable reliance on information supplied by another person.
25. Whilst it is clear 2degrees did rely on information from Lynk, the Commission considers the reliance falls short of being reasonable given the nature of Lynk’s communications and the service limitations known to 2degrees.
26. The Commission has therefore formed the view that this defence would not have a reasonable prospect of succeeding.

Response from 2degrees

27. During our investigation, 2degrees cooperated by admitting the conduct, but maintained that it had reasonable grounds to make the representations at the time of the Campaign based on the information and documents supplied to it by Lynk.
28. The Commission wrote to 2degrees on 17 April 2025 to provide it with a final opportunity to comment on the intention to issue a warning, provide any further relevant information, and identify any information that is incorrect.
29. 2degrees responded to this letter accepting the conduct, the Commission’s findings and intention to issue a warning. 2degrees also advised it is committed to ensuring its claims are not misleading and can be substantiated at the time they are made.

30. Having considered the responses, the Commission's final view remains that there is sufficient evidence to establish that 2degrees has likely breached ss 11, 12A and/or 13(e) of the FT Act.

Enforcement action for breaching the FT Act

31. Where the Commission considers that a person or business has likely breached the FT Act, there are a range of potential enforcement responses available.
32. The Commission reiterates that its view is based on the information collected during the investigation, and that only a court can determine whether there has been a breach of the FT Act. A court can impose penalties where it finds the law has been broken. A company that contravenes the FT Act can be fined up to \$600,000 per offence.
33. In deciding on the appropriate enforcement response in this case, the Commission has considered the extent of the harm, the seriousness of the conduct, and the public interest. The Commission has also considered the limited duration and extent of the campaign, and the fact the most concerning representations appear in the fine print.
34. Further detail on the Commission's approach to making enforcement decisions, the content of a warning, and the Commission's publication approach is contained in the Commission's Enforcement Response Guidelines.²

Consequences of this Warning

35. A warning represents the Commission's view that the conduct in which 2degrees has engaged is likely to have breached the FT Act and that legal action will remain available to the Commission in the future if the conduct continues or is repeated.
36. The Commission may draw a warning to the attention of a court if any subsequent proceedings were brought by the Commission against 2degrees.
37. The Commission may also take a warning into account in the event of continued or repeated similar conduct by 2degrees.

Publication

38. This warning is public information and will be published on the case register on the Commission website. The Commission may decide to redact some details from the published version, such as personal information.

² Available on the Commission's website at https://comcom.govt.nz/_data/assets/pdf_file/0016/356002/Enforcement-Response-Guidelines-July-2024.pdf.

39. The Commission may also make public comment about its investigations and conclusions, including issuing a media release, making comment to media or otherwise publicising the outcome (such as on its social media forums).

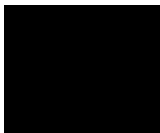
Further information

40. The Commission encourages 2degrees to regularly review its compliance procedures and policies and seek legal advice about the application of the FT Act to its business.
41. To avoid breaching the Act in the future, the Commission recommends that 2degrees ensures it is able to substantiate its representations at the time they are made, that care is taken to not overstate any features of services, and that any limitations of services are adequately disclosed.
42. The Commission has published a series of fact sheets and other resources to help businesses comply with the legislation we enforce. These are available on the Commission website at www.comcom.govt.nz. The Commission encourages 2degrees to visit the Commission website to better understand its obligations and the Commission's role in enforcing the Act.
43. You can also view the FT Act and other legislation at www.legislation.co.nz.

Review of the Commission's decision

44. 2degrees is entitled to request a review of the Commission's decision to issue this warning only if it identifies relevant material that was not considered as part of the decision. 2degrees must request a review within one month of this warning being issued. Any review will be handled in accordance with the Commission's complaints process. Please submit any review request to contact@comcom.govt.nz.

Yours sincerely



Head of Fair Trading and Product Safety Investigations

Attachment One: