

Item: Review of the Copper Withdrawal Code

To: Commerce Commission

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From: Liz Hogan, Head of Commercial Services, FairWay Resolution Limited

Copper withdrawal code

The need for services relying on Copper lines continues to decrease as consumers transition to updated technologies. The bandwidth required for streaming video, gaming and multiple devices in a home have made newer, faster connections such as Fibre and Wireless the standard choice for consumers. With less users requiring copper connections the infrastructure is becoming redundant and costly to maintain.

The Copper Withdrawal Code (CWC) sets out minimum consumer protection requirements to ensure that consumers are protected in situations where a provider chooses to withdraw copper telecommunications services. The purpose of the Commerce Commission's Code is to provide the framework and minimum requirements that must be met before Chorus is able to withdraw copper services.

As the Scheme Agent of the Telecommunications Dispute Resolution Scheme (TDRS), FairWay Resolution Limited provides the following commentary and feedback in relation to the Dispute Resolution portion of the CWC.

FairWay supports the draft Code naming the TDRS as the dispute resolution scheme body. The TDRS currently deals with the majority of telecommunications disputes and is well placed to deal with CWC disputes. It is in consumers best interests for TDR to deal with CWC disputes as there may be some related fibre installation complaints that arise due to the copper withdrawal and this means consumers will only need to complain to one body.

Considerations with working the CWC into the TDRS framework

The process and jurisdiction of the TDRS are set out in the New Zealand Telecommunication Forum Customer Complaints Code and TDRS Terms of Reference. The Customer Complaints Code was designed to deal with complaints from Customers in relation to retail scheme members. While a complaint can be considered in relation to a wholesale scheme member, that complaint must be via the retail scheme member. There are a number of issues that arise between the Customer Complaints Code and the draft CWC that give rise for further consideration, for example:

- Draft clause 61.2, holds that a dispute may be made to [TDRS] "at any time after the dispute arises". This will conflict with the Customer Complaints Code which requires

complaints to be made within 1 year of the Customer's initial discovery of the complaint.

- The Customer Complaints Code only allows TDRS to consider complaints from Customers against providers, where the draft CWC will also allow complaints from retail providers against Chorus.
- Decisions issued by TDRS are non-binding, unless the Customer accepts it, where decisions under the draft CWC are automatically binding.
- The Customer Complaints Code only allows complaints regarding retail scheme members be heard, of which Chorus, as a wholesale scheme member is not.

We can see two ways the above issues can be addressed to allow CWC complaints to be considered by TDRS, those being:

- a) The CWC could include an express provision (our recommended option) holding that Chorus will be treated as if it were a full scheme member of the TDRS (as the nominated dispute resolution scheme) for the purposes of the CWC, from the date the Code comes into force.
- b) The Telecommunications Forum could introduce a set of supplementary rules specifically for the CWC, which says in effect that if there is any conflict between the CWC, and the Customer Complaints Code, the CWC will prevail. Because the CWC requires compliance with the rules of the dispute resolution scheme, then that would logically include all rules including supplementary rules. The changes would require support from all TCF members as the Customer Complaints Code is a mandatory TCF code.

While both options could be applied, our strong preference is for option 'A'. This is because it would mean that the Commerce Commission would clearly set out the principle and that the TDRS could continue to operate without any major changes. In addition, the CWC provides strict requirements with compliance of decisions that are binding and could be the subject of a court order. That being the case, we consider that the more appropriate approach would be to confirm in the CWC the obligations on Chorus to abide by the rules of the TDRS, including compliance with determinations and decisions.

The Commission has proposed to appoint the TDRS as the dispute scheme. The Commission should accept that the TDRS rules apply without modification. If the Commission requires changes to the scheme it can recommend this as part of its TDRS review. Any provisions within the existing rules of TDRS are to be interpreted to give effect to complaints received by the CWC, meaning if there is any conflict between the CWC and the scheme rules (the Customer Complaints Code), that the CWC will prevail.