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Tristan Gilbertson  
Telecommunications Commissioner  
Commerce Commission  
Level 9, 44 The Terrace  
Wellington

Submitted by uploading onto the Commerce Commission website

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Dear Tristan,

## TRUSTPOWER SUBMISSION: MARKETING OF ALTERNATIVE SERVICES TO CONSUMERS DURING COPPER/PSTN WITHDRAWAL

### 1. Introduction

- 1.1. Trustpower Limited (**Trustpower**) welcomes the opportunity to make a submission to the Commerce Commission (**Commission**) about its open letter *Marketing of alternative services to consumers during copper/PSTN withdrawal* of 4 August 2021 (**Open Letter**).
- 1.2. The Open Letter sets out the Commission's concerns with the marketing of alternative telecommunications services by some retail service providers (**RSPs**) to residential customers of copper-based services during copper and PSTN withdrawal. It includes outcomes and conduct principles that the Commission considers necessary to ensure that customers receive the level of retail service quality (**RSQ**) they demand and the Commission's views on how RSPs should deliver these outcomes as soon as possible for customers.
- 1.3. The Commission's preliminary view is that it should issue guidelines that set out outcomes and conduct principles to the telecommunications industry under section 234 of the Telecommunications Act 2001 (**the Act**). Furthermore, the Commission's view is that the industry would then apply the guidelines to formulate an RSQ code that gives effect to the purpose of section 233.
- 1.4. Trustpower submits:
  - (a) We agree with the Commission that it is a concern that some RSPs are providing information to customers of copper-based services, facing switching decisions, that may be incomplete, confusing, or potentially misleading.
  - (b) We agree with the outcomes and conduct principles listed in the Open Letter, and that any RSP's communications with customers on copper-based services (and more generally) should comply with these.
  - (c) We request the Commission consider whether enforcing existing laws and codes is a more appropriate, practical and effective means of enforcing general compliance with its outcomes and conduct principles.
  - (d) It is unclear at this point that an additional protection for consumers at the retail level is required.
  - (e) If a code is required, then it's its scope should determine whether it is prepared by the Commission or the TCF.
- 1.5. We address these points below.

## 2. Support for Commission outcomes and conduct principles

- 2.1. Trustpower supports the defined outcomes and conduct principles set out in the Open Letter.
- 2.2. The outcomes and conduct principles are consistent with our marketing values, where we constantly endeavour to communicate with clarity and respect to customers, factually correct information. Our objective is to enable customers to make informed decisions about product and service options that would best meet their needs, without having to understand the technical detail of each option (unless they want to). We do not consider, therefore, that the publication of guidelines would directly impact on how we communicate with customers.
- 2.3. We also agree with the Commission that it is a concern that some RSPs are providing information to customers of copper-based services, facing switching decisions, that may be incomplete, confusing, or potentially misleading. As the Commission notes, customers using copper-based services may be particularly vulnerable, elderly and less technologically aware. We therefore consider that it is especially important to communicate with these customers with clarity and respect.
- 2.4. In addition, we are concerned that RSPs engaging in such conduct may harm the reputation of the whole industry. If this occurs, then it will become challenging not only for those RSPs that miscommunicate with customers, but other RSPs during the period of copper and PSTN withdrawal.
- 2.5. If an RSP is found to be providing these customers with information that is incomplete, confusing, or potentially misleading, then we consider that the Commission should raise the issue directly with the RSP. If the RSP does not address the issue to the Commission satisfaction, then it would be appropriate for the Commission to act.
- 2.6. There are already a number of customer protections in place at the retail level, which may be relevant for addressing conduct of concern, such as that the Fair Trading Act, Consumer Guarantees Act, Contract & Commercial Law Act, as well as the Copper Withdrawal Code, 111 Contact Code, Fibre Installation Code, and the protections may extend to obligations under TSO.
- 2.7. We request, therefore, that the Commission consider whether taking steps to enforce these existing laws and codes would be an appropriate, practical and effective means for addressing conduct that is of concern.
- 2.8. It is unclear, though, at this point that an additional protection for consumers at the retail level is required as the Commission indicates as we are not aware of the specific details of any RSP conduct of concern.
- 2.9. This present situation would therefore suggest that a potentially effective approach would be for the Commission to issue the principles and outcomes, inviting RSPs to voluntarily commit to comply with them (paragraph 18.1 of the Open Letter). The outcomes and conduct principles would therefore guide RSPs' conduct within the boundaries set by the existing laws and codes. If any RSPs decline to voluntarily commit, or renege on commitments given, the Commission still has available the various customer protections mentioned above. This approach has the advantage that it can be implemented quickly.
- 2.10. Alternatively, the Commission could carry out a gap analysis in order to identify any specific gaps in the current scheme of customer protections. This would help identify whether an additional protection (such as an RSQ Code) is necessary, and if it is then inform its design, ensuring that it is targeted and does not unnecessarily duplicate existing protections. For instance, there could be value in understanding whether the Commission considers that there is a gap between the Open Letter Outcome 3(f) and the protections provided under the

Consumer Guarantees Act.

- 2.11. We appreciate the urgency for the Commission in acting on this matter, but we believe the current consumer protections can be applied effectively and in a timely manner in addressing problems of this nature.

### 3. Scope of code should determine where it is prepared

- 3.1. If the gap analysis reveals, nevertheless, that additional protection is necessary, then whether the TCF or Commission is best placed to prepare an RSQ code to address the present concerns depends on the code's scope. If the scope specifies a code that is technical and process oriented, then Trustpower considers the TCF should be best placed to prepare it, as the TCF membership has the necessary technical expertise. Alternatively, if the code specifies outcomes and principles that the Commission would enforce, then there is no particular advantage in the TCF preparing the code and it may be appropriate and more efficient for the Commission to prepare it.
- 3.2. In order to enable this outcome, though, it is necessary to clearly define the scope of a proposed RSQ code. The Commission plays a crucial role here as ultimately the Commission is required to review the code.
- 3.3. As stated above, we believe that an RSQ Code may not be required. Trustpower, however, considers that the Commission has not yet sufficiently identified whether an RSQ Code is necessary, in light of the existing consumer protections and options available, and if it is necessary has not given sufficient definition to the scope of the RSQ code for either the TCF or the Commission to prepare.
- 3.4. For any questions relating to the material in this submission, please contact me on 027 305 8802.

Regards,



Antony Srzich PhD.

Advisor, Strategy & Regulation