

ISPANZ Response to Commerce Commission Open Letter

Increasing Consumer Awareness of TDRS Non-Membership

Thank you for the opportunity to comment on your letter of 18th July 2022.

ISPANZ is the industry organisation representing ISPs. Very few of our members, who are predominantly small to medium sized companies, are members of the TDRS. As we have noted before, our members report that they have few problems with customers and they work hard to resolve any that do occur. They see TDRS membership as an additional cost that brings no discernible benefit either to them or to their customers.

An End Customer Focus

Your letter is focussed on increasing consumer awareness of TDRS membership or non-membership. You state that non-membership is a problem “given the ongoing high level of complaints and disputes in the telecommunications sector”. Your three options therefore focus on ‘naming and shaming’ non-members. This has nothing to do with the relative quality of those service providers. A service provider may have shoddy customer service and be a TDRS member. A non-member may have excellent customer service.

‘Increasing consumer awareness of TDRS non-membership’ has nothing to do with what you want to achieve; the protection of consumers’ interests.

ISPANZ therefore contends that ‘increasing consumer awareness of TDRS non-membership’ will lead you down a rabbit hole and away from good outcomes for consumers. We believe that the focus of your letter, and the options that it contains, will not contribute to good outcomes for consumers and that therefore the letter should be withdrawn.

To resolve “the ongoing high level of complaints and disputes in the telecommunications sector” means improving the behaviour of telecommunications service providers. This cannot be achieved through membership of the TDRS. The TDRS is a mechanism for resolving complaints and disputes – it does not stop them occurring. It is recommended that the Commerce Commission examine what the root causes of “the ongoing high level of complaints and disputes in the telecommunications sector” are. If you know what is causing these complaints and disputes then you will be able to identify what regulatory or other mechanisms might prevent future complaints and disputes from occurring in the first place.

Anti-Competitive Options

ISPANZ regards your three options as anti-competitive. They would deter potential customers from using smaller ISPs, regardless of what we would see as the higher quality service that our members provide. This would drive potential customers to the small clique of larger ISPs, thus reducing competition in the marketplace. The purpose of the Commerce Act 1986 is to “promote competition in markets for the long-term benefit of consumers within New Zealand”. Your three options work against this purpose. They

would effectively allocate the market to TDRS members, contrary the s30A(1)(c) of the Commerce Act.

Difficulty in Listing ISPs

Publishing a list of service providers who are not TDRS members would rely on you being able to identify all ISPs. Given that current regulation does not require service providers to be gazetted as Network Operators, we are unsure how you could produce a comprehensive and complete list. We get companies applying to become ISPANZ members which we have never heard of before, and we suspect that you would have no idea that they needed to be included on a list of non-members of the TDRS. Publishing a list of TDRS members would be much easier, but even that would not contribute to better outcomes for consumers.

The Existing Alternative to TDRS

Consumers who purchase their services from non-TDRS members are not cut off from a disputes resolution process. The Disputes Tribunal hears complaints made by consumers, including by ISPs' customers. It is simple for telecommunications consumers to make a claim against their ISP;

<https://www.disputestribunal.govt.nz/how-to-make-a-claim/apply-online/>

There is a small fee, but this is refundable if the claim is successful, and if the claim is not vexatious the claimant should be confident in being able to recoup this cost.

Given the existence of this route for resolving disputes, one could question the benefit of having the TDRS in the first place. Rather than proposing that non-

membership in TDRS be used to name and shame, there would be more benefit in requiring ISPs who are not TDRS members to ensure that their customers are aware of the Disputes Tribunal process and how to make a claim to that tribunal.

TDRS Costs - A User-Pays System

One of the deterrents to TDRS membership is the cost. Small companies manage their cashflows carefully, and vigorously prune unnecessary expenses.

At present the TDRS fee structure is weighted heavily in favour of larger ISPs. For example, Spark has around (2021) 701,000 broadband connections, 2.4 million mobile devices, and a TDRS fee of \$485,465 per year. If just counting the broadband connections they pay **\$0.69 per connection per year**. Counting their total connections (0.7mill + 2.4mill) it is **\$0.16 per connection per year**. For comparison, one ISPANZ member has calculated that they would have a TDRS fee of \$1,177 per year. For them this would mean **\$4.10 per connection per year**. Depending on the method of measurement that means that, for them it would be either **5.94 times** or **25.63 times more expensive** than the bigger players. That is clearly inequitable and illustrates why smaller ISPs are not motivated to join TDRS – especially as a perfectly workable alternative to protect their customers’ rights already exists.

If the real aim is for ‘consumers and businesses (to) participate confidently’ (Fair Trading Act s1A(1)(c)) then incentivising companies to avoid disputes, and then to resolve them rapidly, would be more effective than publicising TDRS non-membership. Making TDRS membership free would remove the barrier to

entry (or continued membership) for smaller companies. Complaints submitted to the TDRS could then be funded on a user-pays basis, with fees payable per complaint on a sliding scale reflecting the complexity of the dispute. These fees should be equal to, or less than, those charged by the Disputes Tribunal. ISPANZ would support this approach. It would rapidly focus service providers on avoiding complaints in the first place and on rapidly resolving any disputes that do occur. It would contribute to better outcomes for consumers.

A Complaints League Table

As noted earlier, ISPANZ regards ‘naming and shaming’ non-TDRS members as anti-competitive. Instead of publishing a list of non-members, ISPANZ would support publishing a league table of all service providers showing complaints per thousand customers per year (or some similar and fair measure). That would name and shame those service providers who are not delivering quality service, rather than those that are. It would provide them with an incentive to improve.

Rather than requiring service providers to keep telling their customers that they are not TDRS members, ISPANZ would support a regime which required all service providers to regularly draw their customers’ attention to the league table showing every ISP’s complaints received per thousand customers. That would give consumers much more useful information.

Responses to Specific Questions

Question 1 - Do you agree it is necessary to take steps to increase consumer awareness and understanding in this area?

No, there is no need. If there is a need, then your three proposed options are not the way to do it.

Question 2 – Which of the three options outlined above do you prefer and why?

The three options are based on the false premise that consumers being unaware of TDRS membership is a problem. It is not. Highlighting non-membership in TDRS does not tackle the real problem. Rather than solving a problem, any of your three options would result in the Commerce Commission acting in an anti-competitive manner and this would reduce competition and the variety and quality of service offerings available to consumers.

Question 3 – Are there any other options not considered in this letter?

Yes. These have been explored in this document and are summarised below.

Question 4 - Should there be an exemption for smaller providers from any disclosure requirements? If so, on what basis, and what threshold should apply?

Rather than providing exemptions, it is recommended that the approach proposed in your letter be replaced with an alternative system that would deliver fair outcomes for all ISPs as well as producing well informed and protected consumers.

Question 5 - What period of time should be allowed for non-members to join TDRS under Option 1?

Option 1 should not be adopted, therefore this question is moot.

Question 6 - Do you agree that a Commission Code would be the most effective way of implementing disclosure obligations under Option 2?

Option 2 should not be adopted, therefore this question is moot.

Conclusions

ISPANZ members see TDRS membership as an additional cost that brings no discernible benefit either to them or to their customers.

‘Increasing consumer awareness of TDRS non-membership’ has nothing to do with what you want to achieve; the protection of consumers’ interests. Your proposals work against good outcomes for consumers. Your letter should be withdrawn.

The root causes of “the ongoing high level of complaints and disputes in the telecommunications sector” should be examined. If you know what is causing these complaints and disputes then you will be able to identify what regulatory or other mechanisms might prevent future complaints and disputes.

ISPANZ regards your three options as anti-competitive. They would work contrary to the stated purpose of the Commerce Act and would contravene that Act by effectively allocating the market to TDRS members.

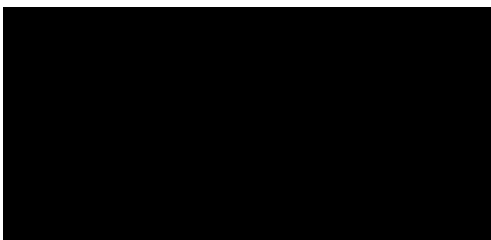
Your proposals assume that you have a comprehensive list of all ISPs. We are unsure how you could produce a comprehensive and complete list.

There is an existing, functioning alternative to the TDRS. Rather than proposing that non-membership in TDRS be used to name and shame, there would be more benefit in requiring ISPs who are not TDRS members to ensure that their customers are aware of the Disputes Tribunal process and how to make a claim to that tribunal.

The TDRS' current fee structure is weighted heavily in favour of larger companies. This is clearly inequitable and illustrates why smaller ISPs are not motivated to join TDRS – especially as a perfectly workable alternative to protect their customers' rights already exists. TDRS membership should be free and be funded on a user-pays basis, with fees payable per complaint on a sliding scale reflecting the complexity of the dispute. These fees should be equal to, or less than, those charged by the Disputes Tribunal. This would contribute to better outcomes for consumers.

Instead of publishing a list of TDRS non-members, the Commerce Commission should publish a league table of all service providers showing complaints per thousand customers per year (or some similar and fair measure). That would name and shame those service providers who are not delivering quality service, rather than those that are. It would provide them with an incentive to improve. Service providers should then be required to draw their customers' attention to the existence of this list.

ISPANZ would like to see well-informed consumers being provided with high quality telecommunications services and with recourse to a simple process for resolving disputes and complaints. Your focus on non-membership of TDRS does not work towards that outcome. Please withdraw your letter of 18th July 2022.



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