



ENABLE NETWORKS LIMITED, NORTHPOWER FIBRE LIMITED AND ULTRAFAST FIBRE LIMITED

SUBMISSION IN RESPONSE TO THE COMMERCE COMMISSION DRAFT BASELINE REPORT RELATING TO IMPROVING RETAIL SERVICE QUALITY

15 October 2021

PUBLIC VERSION

1. Introduction

- 1.1 This submission is made by Enable Networks Limited, Northpower Fibre Limited and Ultrafast Fibre Limited (collectively referred to in this submission as either the **LFCs** or **we**, and **us** or **our**) in response to the draft baseline report issued by the New Zealand Commerce Commission (**Commission**) on 14 September 2021 relating to improving retail service quality (**RSQ**) by retail telecommunications service providers (the **RSQ Report**).
- 1.2 The Commission has identified that while there is increased competition for telecommunications services, that competition alone has not addressed all of the RSQ issues that matter to consumers – as evidenced by a consistently high level of consumer complaints over the past 10 years. Part 7 of the the Telecommunications Act 2001 (**Act**) was developed to address these issues and enables the Commission to take steps to improve RSQ for consumers.
- 1.3 In the context of RSQ, consumers receive services directly from their chosen retail telecommunications service providers (**RSPs**). Conversely, the LFCs are prohibited by regulation from operating a vertically integrated business model, which means we can only supply wholesale fibre (**FFLAS**) telecommunications services to RSPs and are prohibited from selling retail services directly to consumers. For mobile services, the largest RSPs are not regulated and are allowed to vertically integrate. This means that, in addition to FFLAS, they are allowed to own and operate mobile networks and retail mobile and fixed wireless broadband (**FWA**) services directly to consumers. They also wholesale mobile network access to a few RSPs who retail to consumers as a Mobile Virtual Network Operators (MVNOs), often bundling mobile alongside other services such as power and FFLAS.

2. Background

- 2.1 The current concerns relating to RSQ are not new. In 2018, Parliament reviewed the Act and gave the Commission new powers and a clear direction to look more closely at consumer outcomes in retail telecommunications markets. The Ministry of Business, Innovation and Employment (**MBIE**) noted a high level of customer dissatisfaction and complaints generated by the telecommunications sector, including issues of “*poor customer service, poor quality products (coverage and speed), difficulties with installations, misleading information and billing disputes*”.¹
- 2.2 MBIE also noted that the number of consumers affected by these issues, and the frequency with which the same complaints were raised, suggested that there is a systemic problem in how telecommunications providers engage with consumers.² MBIE determined that the regulatory settings:³
- (a) *had delivered insufficient information to support effective consumer choice in a rapidly changing environment;*
 - (b) *were over-reliant on industry self-regulation;*
 - (c) *left room for improved consumer responsiveness by retailers; and*
 - (d) *were modest in their attempts to safeguard consumer interests, compared to other similar overseas jurisdictions (for example the UK and Australia).*

MBIE was not convinced that “...relying on competitive influences and regulation focussed on the wholesale level had been as effective as hoped...”, and that “...having codes and standards of delivery at the retail level, and a credible threat of mandatory consumer code regulation was thought likely to incentivise better coverage and depth of information to consumers and greater responsiveness to consumer preferences (in both price and quality) by suppliers.”⁴ Unfortunately,

¹ MBIE “Regulatory impact statement – Telecommunications Act Review: consumer matters” (30 Mar 2017) (**MBIE report**), para 5

² MBIE report, para 18

³ MBIE “Cabinet paper - Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection” (Jun 2017), para 8

⁴ MBIE Report, paras 45-47

our experience and the experiences customers are telling us they are having, means we believe these observations remains relevant to some retailer behaviour today.

3. Statutory framework and the role of the Commission and TCF

- 3.1 The purpose of this Act is to *regulate the supply of telecommunications services*.⁵ The Act also gives the Commission power to *monitor retail service quality in relation to telecommunications services*;⁶ and *make available reports, summaries, and information about retail service quality in a way that informs consumer choice*.⁷
- 3.2 In order to perform its functions under ss9A(1)(e) and (f), the Commission may also require *any provider of telecommunications services* (including a RSP) to *prepare and produce forecasts, forward plans, historical information, or other information and apply any methodology or format specified by the Commission in the preparation of forecasts, forward plans, historical information, or other information*.⁸
- 3.3 The telecommunications industry can also develop and monitor its own industry RSQ codes via the New Zealand Telecommunications Forum (**TCF**). The Commission:
- (a) may at any time review an industry RSQ code;
 - (b) after each review, must advise the TCF, the dispute resolution provider for the code, and the Minister, of any recommendations for improving the code, and of any recommendations for creating a new code; and
 - (c) must also advise the Minister if previous recommendations have been implemented, and if in the Commission's opinion the code fails to achieve, or a Commission RSQ code would better achieve, the purpose of s233 of the Act.

4. Key RSQ matters for improvement

- 4.1 We agree with the Commission that all of the RSQ matters listed in table 4 of its RSQ Report need improving; the justification for this is clear from the consumer feedback summarised in the RSQ Report and in Research New Zealand's Consumer Technology Survey 2021. All of these matters can be addressed.
- 4.2 We generally support an industry-led approach to improving RSQ, however we believe the Commission should exercise its powers to ensure safeguards are built in to ensure progress is made by way of mandated deadlines – and if those deadlines are not met, the Commission must take action in the form of a regulated RSQ code.
- 4.3 This submission is focused on Product Disclosure, Switching and the supply of evidence based information by RSPs to consumers because we are prohibited from selling retail services to consumers and these issues directly and materially affect the supply of fibre services by RSPs⁹:
- (a) **Product Disclosure:** As the Commission is aware, the self-regulated TCF Broadband Product Disclosure Code is finally being reviewed by the TCF, but it is taking longer than necessary. We need this review to address the matters identified by the Commission and fix other areas of product disclosure to improve overall consumer satisfaction. We need consumers to be able to make informed choices and have access to information is critical to that experience. Therefore, we submit that the Commission must require the TCF to include the following in the revised Broadband Product Disclosure Code:
 - (i) the Code must be technology neutral so that it applies to copper, fibre, wireless,

⁵ Telecommunications Act 2001, s3(1)

⁶ Telecommunications Act 2001, s9A(1)(e)

⁷ Telecommunications Act 2001, s9A(1)(f)

⁸ Telecommunications Act 2001, s10A

⁹ Ultrafast Fibre Limited submission in response to the Commission's "Open Letter relating to Retail Service Quality dated 29 October 2020", dated 26 February 2021, paras 3.2 and 3.4

FWA and HFC, and include a simple process for adding other technologies as they become available to consumers;

- (ii) RSPs must disclose:
 - A. product performance in terms of average speed (using the *Measuring Broadband New Zealand* reports as evidence), availability and downtime (by product type and geographic location);
 - B. product limitations (including data caps); and
 - C. charges, including early termination fees,
 - (iii) the information reported by RSPs must be clearly visible, accessible, easy for consumers and stakeholders to understand their options, what they are purchasing and compare between RSPs and products;
 - (iv) a regular independent monitoring process led by the Commission;
 - (v) an unambiguous and effective process for dealing with breaches via the TCF code compliance framework, with clear consequences for non-compliance; and
 - (vi) the Commission’s outcomes and conduct principles from its Open Letter¹⁰ are embedded into the Code [* As we explained in our submission in response to the Open Letter,¹¹ the Commission should ensure that its final principles and guidelines are applied more broadly (where appropriate) and not limited to marketing during copper withdrawal or PSTN migration].
- (b) **Switching:** RSPs are commercially incentivised to make switching off their own service as unattractive and difficult as possible for the customer. We recommend a thorough investigation by the industry, and under the supervision of the Commission, be undertaken to understand the switching process so that the industry can first identify areas where improvements can be made and then such improvements codified in a revised TCF Customer Transfer Code. The lack of any disclosure obligations on RSPs has resulted in the current absence of any meaningful information to allow consumers to compare their options, and the lack of incentives to make switching between different RSPs or technology types as simple and straight-forward process for the customer, is why we believe regulatory intervention is required. The Commission’s power under Part 7 of the Act is the appropriate mechanism to mandate such improvements.

4.4 A short summary of our views on these matters is in the table below.

RSQ Category	RSQ matters identified by the Commission	LFC views
Billing	consumers experience errors in their bills	RSP issue to resolve.
	consumers struggle to understand their bills	RSP issue to resolve.
	consumers experience bill shock	RSP issue to resolve.
	consumers face long wait times and multiple transfers when dealing with their RSP	RSP issue to resolve.
Customer service	RSPs keep poor records of previous dealings with customers	RSP issue to resolve.
	consumers find it difficult to understand customer service representatives	RSP issue to resolve.
	consumers find it difficult to resolve issues	RSP issue to resolve.
	consumers lack information about the installation process	RSPs approved the TCF Fibre Installation Code. RSP staff training may be an issue. The LFCs are open to working with RSPs to simplify information and forms for consumers.

¹⁰ Commission’s Open Letter re: “*Marketing of alternative services to consumers during copper/PSTN withdrawal*” dated 4 August 2021 (**Open Letter**)

¹¹ Enable Networks Limited, Northpower Fibre Limited and Ultrafast Fibre Limited submission in response to the Open Letter, dated 26 August 2021 (**LFC response to the Open Letter**), para 4.1(b).

RSQ Category	RSQ matters identified by the Commission	LFC views
Product disclosure	consumers find marketing of new technologies inconsistent and confusing	refer to our submission ¹² ; to be addressed in the revisions to the Broadband Product Disclosure Code (BPDC).
	product information and service quality do not always match or line up	Ibid
	"up-to" advertised performance indicators do not give an accurate indication of expected performance	RSPs should not be allowed to advertise performance indicators that cannot be maintained for at least 90% of the time the service is available to the consumer; to be addressed in the revisions to the BPDC.
	consumers find it difficult to compare plans	this should include comparing different available services (technology types)
	plans are complex with a lot of add-ons and bundled offers	RSPs to simplify language and accessibility to information.
	usage information is inadequate to assess appropriate plans	Ibid
	coverage maps can be inconsistent, inaccurate, or difficult to interpret	RSP issue to resolve. Fibre availability (and maps) is easily accessible.
Switching	consumers experience issues with the switching process such as double-billing errors, long delays and unreliability	Commission must mandate reporting on RSP compliance with the TCF Fibre Customer Transfer Code. LFCs currently monitor and report their compliance with this Code.
	consumers expect switching to be difficult	RSP to provide consistent information and support to customers to explain the switching process.
Contract issues	consumers face high exit and ETFs	RSP issue to resolve to ensure they comply with the Fair Trading Act 1986 (FTA).
	RSPs unilaterally vary contract terms	RSP issue to resolve to ensure they comply with the FTA.
Debt practices & affordability	RSPs do not appear to have adequate consumer support, or debt management policies	RSP issue to resolve to ensure they comply with the Credit Contracts and Consumer Finance Act 2003 (CCCFA).
	RSPs do not appear to perform basic affordability checks	RSP issue to resolve to ensure they comply with the CCCFA.

4.5 The Commission has also invited feedback on the following questions:

No.	Consultation questions	LFC responses
1.	Do you agree the proposed key RSQ matters need improving? Please tell us why, or why not.	Refer to para 4 above.
2.	Do you agree that debt and affordability practices fall within the scope of RSQ? Please tell us why, or why not.	We support the industry position stated in the TCF submission in response to the RSQ Report.
3.	Do you agree that the Commission should only maintain a watching brief over the matters in para 53? Please tell us why, or why not.	Key current matters correctly identified by the Commission; keep a watching brief on evolving prominent issues.
4.	Of the proposed key RSQ matters, which ones do you think the Commission should address first? Please tell us why.	The Commission should focus on product disclosure and switching to provide the industry with guidance required to amend current codes.
5.	Do you think an industry or Commission RSQ code would improve the proposed RSQ matters? Please tell us why, or why not.	An industry code is the right place to start given the knowledge and experience of the participants. However, the Commission must be ready to step in and take over if a mandated deadline is not met or the codes are insufficient to improve RSQ.

5. Additional LFC submissions

5.1 As wholesalers, our only direct engagement with a customer is limited to general education and awareness marketing of the availability and benefits of fibre, the initial installation, or remote reactivation, of a fibre service – and our Part 6 obligations require us to report on our uptake,

¹² LFC response to the Open Letter, paras 4.1-4.6.

product mix, service level and service availability performance. In addition, our products, processes and performances are controlled and monitored by our Part 4AA undertakings, Reference Offer, TCF Fibre Installation Code and TCF Customer (Fibre) Transfer Code.

- 5.2 Those Codes were developed in consultation with, and approved by RSPs, and are designed to ensure the fibre installation and fibre transfer (switching) process are simple, quick and efficient for the customer. We each operate a continuous improvement model, and we are open and willing to work with RSPs and the Commission to identify and implement any improvements in our processes to make it easier and more empowering for customers to make fibre available and installed.
- 5.3 As wholesale FFLAS network operators who have been operating for 10 years, we are acutely aware of how the actions of our RSP stakeholders and the information (or lack of) they make available to customers controls the customer experience and the success of our respective businesses. What they *do* and what they *say* means the most to the customer. It is disappointing to us that the same RSPs remain unmotivated to publicly acknowledge the extent of the RSQ issues confirmed in the RSQ Report, the effect on consumers and lack any interest in proactively remedying issues without the Commission or TCF involvement.
- 5.4 If ever there was a clear example of how the behaviour of those RSPs is entrenched and affecting competition in the market and therefore the outcomes for consumers, the Commission should refer to the responses to its Open Letter *Seeking Stakeholder Views On Additional Information Published Relating To Incentive Payments* dated 30 September 2021 - most of which focussed on the conduct of the mobile network operators (**MNOs**) who also retail copper, fibre, mobile and FWA services:

It is not surprising that Spark and Vodafone are making unsubstantiated claims about current incentive offers to support their fixed wireless play. The goal appears to be to distract the Commission from its task and it would be prudent for the Commission to approach their arguments with a healthy degree of scepticism. These are poor behaviours of the past and attempts to return to industry market structures that have a severe and detrimental impacts on competition.¹³

We are aware that Spark and Vodafone have raised concerns about Chorus' incentive programmes. As owners of competing network infrastructure, their motivations are clear and the Commission should be alert to that. Notwithstanding that Vodafone and Spark have access to these incentives, they are fundamentally conflicted.¹⁴

We note that the Commerce Commission has already raised concerns around the way alternative network products are being communicated and there is material risk that end users remain confused and will base their supplier choices purely on price¹⁵

¹³ SKY submission on *Chorus price-quality path from 1 January 2022 draft decision* dated 24 September 2021

¹⁴ NOW NZ Ltd submission on *Chorus price-quality path from 1 January 2022 draft decision* dated 1 September 2021

¹⁵ Devoli submission on *Chorus price-quality path from 1 January 2022 draft decision* dated 15 September 2021 (**Devoli submission**)

Hampering Chorus, and therefore our, ability to compete on price by reducing the timeliness and effectiveness of Chorus incentives at the same time as the vertically integrated mobile operators are misleading customers, would appear to be a backward step, from our experience, in a reasonable and fair competitive market and may have adverse impact on end users¹⁶

5.5 It is clear that a lot of retailers in the market would also benefit from improved RSQ regulations to deliver increased visibility through disclosure reporting, compliance monitoring and enforcement – as well as increased transparency – and the Commission has the power to make these longer overdue improvements for customer choice and ensure there is workable competition in the telecommunications market.

5.6 In addition:

- (a) we want to confirm our support for the work being undertaken by the Commission to better protect consumers and ensure consumers receive the level of retail service quality they require – which includes the conduct principles and options recently released by the Commission in its Open Letter, and the desire to see the implementation of a new code that reflects the principles and achieves the Commission’s goal to bring retailer “*marketing conduct into line*”¹⁷;
- (b) we believe the outcomes of the Commission’s RSQ project will deliver improvements to customer service and reduce customer complaints with clear rules around RSP behaviour and disclosure of information to allow customers to make informed decisions and know what to expect;
- (c) we think these outcomes will achieve more for consumers than *tinkering* with the structure of peripheral functions like the TDRS;
- (d) in our view, time is of the essence for correcting RSP marketing and sales behaviours and improving the experience for customers;
- (e) we believe this can be achieved by the Commission and RSPs focussing on satisfying the policy objectives behind Part 7 of the Act and the views expressed by the Minister regarding the complacency of telecommunications retailers that leads to poor customer experiences and outcomes; and
- (f) we support the Commission continuing to use its other enforcement powers under the Fair Trading Act 1986 to monitor and improve RSP behaviour.

5.7 We thank the Commission for the opportunity to provide feedback on the RSQ Report and would be happy to discuss our comments in more detail.

¹⁶ Devoli submission

¹⁷ Open Letter [5]