



**ENABLE NETWORKS LIMITED, NORTHPOWER FIBRE
LIMITED AND ULTRAFASST FIBRE LIMITED**

**SUBMISSION IN RESPONSE TO THE COMMERCE
COMMISSION DRAFT REPORT RECOMMENDING
IMPROVEMENTS TO THE TELECOMMUNICATIONS
DISPUTE RESOLUTION SCHEME**

27 September 2021

PUBLIC VERSION

1. Introduction and Background

- 1.1 This submission is made by Enable Networks Limited, Northpower Fibre Limited and Ultrafast Fibre Limited (collectively referred to in this submission as **LFCs**) in response to the draft report of the New Zealand Commerce Commission (**Commission**) to the New Zealand Telecommunications Forum (**TCF**) on recommendations for improvements to the TDRS dated 30 August 2021 (**TDRS Report**)¹.
- 1.2 The TDRS Report follows a review of the Telecommunications Dispute Resolution Scheme (**TDRS**) by the Commission under Part 7 of the Telecommunications Act 2001 (the **Act**). At the end of the Commission's review of the TDRS it intends to provide any recommendations on improving the TDRS to the TCF.
- 1.3 The Commission is required to review each industry dispute resolution scheme at least once every 3 years and provide any recommendations to the scheme provider on how to improve the scheme. The TDRS, New Zealand's only telecommunications industry dispute resolution scheme, was set up by the TCF as the scheme provider.
- 1.4 The TCF:
- (a) created the Customer Complaints Code and the Terms of Reference for the TDR service, which together form the TDRS; and
 - (b) appointed Fairway Resolution Limited as the dispute resolution provider for the TDRS.
- 1.5 The Customer Complaints Code provides for Retail Scheme Members (**RSMs**) (members who hold the billing relationship with the customer) and Wholesale Scheme Members (**WSMs**) who supply wholesale telecommunications services to RSMs. The LFCs are WSMs.
- 1.6 Sections 2 and 3 of this submission focus on the recommends in the TDRS Report specific to WSMs. Section 4 sets out our submissions relating to RSM behaviour and other potential TDRS changes.

2. The Commission's WSM proposals

- 2.1 The Commission engaged an external consultancy, *cameron. ralph. khoury* (**CRK**), to interview industry members and prepare an expert report (**CRK Report**).² The CRK Report made two findings in relation to the role of WSMs in the TDRS:

Finding 11: *TDRS processes for a complaint that is primarily about a Wholesale Scheme Member are unduly cumbersome, reduce the efficiency of the scheme and frequently provide a worse customer experience than needs be.*

Finding 25: *The Complaints Code processes for involving WSMs in complaints are not currently fit for purpose and are diminishing the effectiveness of the TDRS.*

- 2.2 CRK stated that current *market practices, TDRS complaint processes, scheme cost recovery issues and reporting practices all provide compelling reasons to revisit the way in which WSMs are part of the TDRS.*³
- 2.3 The Commission has accepted these findings:

¹ NZCC Review of the Telecommunications Dispute Resolution Scheme 30 August 2021 (**TDRS Report**)

² Cameron Ralph and Khoury *Expert Report for NZCC for the purposes of its review of the TDRS*, August 2021 (**CRK Report**)

³ CRK Report [244]

The Customer Complaints Code stipulates that complaints that are primarily, or even solely, about a Wholesale Scheme member must be assigned first to the customer's Retail Scheme Member. The Wholesale Scheme Member may then be added as a party to the complaint. CRK's case review found that TDRS's processes for Wholesale Scheme Members can be cumbersome...⁴

To reduce the complexity of the complaints handling process and improve efficiency of the scheme, the Commission considers that Wholesale Scheme Members should be better integrated into the Customer Complaints Code. This is particularly the case with respect to complaints under the Copper Withdrawal Code or fibre installation, where Chorus or a Local Fibre Company (a Wholesale Scheme Member), will typically be a party to the dispute.⁵

- 2.4 The Commission accordingly makes the draft recommendation to *"improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently"*.⁶ *"Proposed changes should be developed with the TDRS Council and tested via a full public consultation process with the Scheme Agent and other interested parties (including consumers and consumer groups)"*.⁷

3. LFC views on WSM proposals.

- 3.1 The Commission's conclusion that the process whereby a complaint must first be made to an RSM, and a WSM made be subsequently added to a complaint is "cumbersome", and the complaints handling system can be simplified and made more efficient by better integrating WSMs into the TDRS is not supported by the facts.
- 3.2 Firstly, TDRS records will confirm that the annual number of WSM complaints are negligible; and this includes complaints LFCs have received directly from a customer as well as via the TDRS and RSM.
- 3.3 Secondly, Fairway will confirm that the very small number of complaints WSMs received are resolved quickly and efficiently, and well within the TDRS timeframes.
- 3.4 Thirdly, the TDRS process reflects the commercial wholesale/retail relationship set out in our Reference Offers. Using the example in the CRK Report of a customer complaint about 'speed', the customer must contact their retailer first to log the fault, so that the retailer can initiate our fault logging and restoration process. In accordance with our Reference Offer, the retailer must first diagnose the circuit and confirm the issue is on our network before they can log a fault with us.
- 3.5 We always work with the relevant retailer to check their network performance results first; in our experience in 99% of cases the issue is with the retailer's layer 3 service, not the wholesale layer 1 or 2 service issue that we are responsible for. As we explained to CRK during the interview phase of their review, the vast majority of TDRS complaints (excluding complaints about retailer billing or customer services, which solely relate to RSMs) about fibre service performance relate to RSM issues.

⁴ TDRS Report [148]

⁵ TDRS Report [149]

⁶ TDRS Report [DR 15]

⁷ TDRS Report [DR 1]

- 3.6 The requirement that a complaint is logged with the RSM in the first instance must remain because it is operationally necessary, irrespective of any tinkering with the structure of the TDRS. The WSM would be added to the complaint in the rare cases that the RSM's fault logging and restoration process has identified the fault as a layer 1 or layer 2 issue.
- 3.7 Spark's comment that *we are increasingly engaging directly with customers*⁸ is at best misleading. We do not have a continuing direct relationship with a customer because of the separation of wholesale and retail services required under the Act. We are expressly prohibited from supplying any type of services to end users (customers).
- 3.8 Our direct engagement with a customer is limited to the initial installation, or remote reactivation, of a fibre service. These processes are governed by the TCF Fibre Installation Code (**Install Code**) and TCF Customer (Fibre) Transfer Code (**Transfer Code**), both of which were developed by the industry, approved by RSMs and are designed to ensure the fibre installation and transfer (switching) process is simple, quick and efficient for the customer.
- 3.9 We were active participants in developing the Install Code and Transfer Code and operate in full compliance with them. Using the example in the CRK Report of a customer submitting a complaint about the method of installation for their fibre service, the Install Code (sections 23.1, 23.2, 25.6.2, 25.7 and 25.7.1) determines the installation method, the information to be disclosed to the customer (including design options) and obtaining confirmation of customer acceptance before any installation work commences.
- 3.10 If a customer is not happy with the proposed installation method, this should not qualify as a complaint under the Complaints Code and the TDRS should not have jurisdiction. This is because the process is clearly defined in the Install Code and the fibre installation method we select is determined by what is required for the relevant premises (including the type of communal network infrastructure to which the customer's fibre installation will be connected). We also self-monitor our performance and report annually to the TCF on our compliance with the Install Code.
- 3.11 The number of customer complaints relating to fibre installation consents and workmanship we have received in 10+ years is very low. These are managed directly between the LFC and the customer and resolved quickly. Installation issues will continue to reduce as more premises are connected because any future (re)connection to a previously connected (intact) premises can be done remotely.
- 3.12 The current RSM/WSM structure and funding of the TDRS appropriately reflects the supply arrangement between the customer and their RSM, and the proportion of RSM related complaints relative to the very small number of WSM related complaints. While we do not agree that the *"practice of attributing all WSM complaints to the relevant RSMs unfairly distorts statistical reporting about RSMs"* we are happy for complaints relating to WSMs only to be reported as such, and not attributed to the relevant customer's RSM.
- 3.13 For the reasons set out above, we do not support the proposal for WSMs to be full members of the TDRS.

4. Additional submissions relating to RSM behaviour and potential TDRS changes

- 4.1 We support the work being undertaken by the Commission to better protect consumers and ensure consumers receive the level of retail service quality they require. This includes the conduct principles and options recently released by the Commission in its Open Letter⁹, and the

⁸ CRK Report [132]

⁹ NZCC *Marketing of Alternative Services to Consumers during Copper/PSTN Withdrawal* 4 August 2021 (**Open Letter**)

desire to see the implementation of a new code that reflects the principles and achieve the Commission's goal to bring retailer "*marketing conduct into line*" ¹⁰.

- 4.2 We believe the outcomes of the Commission's RSQ project will deliver improvements to customer service and reduce customer complaints with clear rules around RSM behaviour and disclosure of information to allow customers to make informed decisions and know what to expect. We think these outcomes will achieve more for consumers rather than unnecessary tinkering with the structure of the TDRS.
- 4.3 We support the Commission's proposal in DR3 to remove the exclusions in clauses 18.1.6, 18.1.14 and 18.1.21 in the TCF Customer Complaints Code, provided that the inclusion of complaints relating to the extent of network coverage (18.1.6) are limited to complaints relating to mobile network services (and coverage). The coverage of FFLAS is governed by the Act and UFB contracts and not amenable to dispute resolution under the TDRS.
- 4.4 Time is of the essence for correcting retailer marketing and sales behaviours and improving the experience for customers. We believe this can be achieved by the Commission and RSMs 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.
- 4.5 We support the Commission continuing to use its other enforcement powers under the Fair Trading Act 1986 to monitor and improve RSM behaviour.
- 4.6 We thank the Commission for the opportunity to provide feedback on the TDRS Report and CRK Report and would be happy to discuss our comments in more detail.

¹⁰ Open Letter [5]