



Vodafone Aotearoa response to the Commerce Commission's Review of the Telecommunications Dispute Resolution Scheme

27 September 2021

Executive summary

1. We support the Commerce Commission's (**the Commission**) review of the Telecommunications Dispute Resolution Scheme (**TDRS**) and the objective of ensuring consumers continue to receive fast and effective dispute resolution. The TDRS provides a critical role in the telecommunications sector and we see having an effective dispute resolution scheme as a critical ingredient to ensuring that consumers' reasonable expectations about the nature and quality of services our industry provides are met. We see the TDRS scheme as complementary to the steps Vodafone is already taking to transform its customer experience. We support changes that will result in the scheme becoming more effective and will take steps to ensure that our customers are aware of this scheme and use it, as well as playing a role to improve the scheme through our membership of the TDRS Council.
2. We are encouraged by the fact that the feedback we provided during the consultation process in the expert report of **cameron. ralph. khoury (CRK)** has been considered and a number of our recommendations have been reflected in the expert report and the Commission's paper.
3. We support the majority of the recommendations put forward by the Commission for improving the TDRS. However, there are some further considerations that we urge the Commission to examine and include in the final report. In summary:
 - a. Membership of the TDRS must be mandatory for the entire telecommunication industry to ensure there is a level playing field and *all* consumers have equal



protections. Even if there is no existing mechanism to require mandatory membership, there is nothing that prevents the Commission from making this recommendation. The goal of a comprehensive and effective resolution scheme is undermined if the Commission is willing to tolerate avoidance by parts of the industry.

- b. More needs to be done to integrate wholesalers into the TDRS and improve cooperation between wholesalers and retailers in solving customer complaints. In particular, wholesalers must be financially accountable for providing compensation for complaints related to their services.
- c. The Commission must provide further clarification around the proposal to widen the TDRS jurisdiction scope to include complaints relating to equipment sold by a telecommunications provider to a consumer, complaints relating to the extent of network coverage, and complaints relating to broadband congestion or speed, as there are a number of questions around how including these aspects into the scheme would work in practice which we outline below.
- d. The proposal to shorten the deadlock period to 10 working days should be changed to 15 working days and an amendment added to enable consumers to avoid a compulsory deadlock after that period if they are satisfied with the progress being made to resolve their case.

Membership of the TDRS

- 4. We note that the CRK report recognises the importance of having mandatory membership of the TDRS for the entire telecommunications industry¹. However, the Commission has fallen short in its recommendations by proposing only that ‘the TCF should actively encourage a broader membership of the TDRS.’²
- 5. The CRK report indicates that there was pushback to the suggestion of making the TDRS scheme mandatory for all providers from an internet services provider industry association whose members are mostly not TDRS members. This suggests that it is unlikely that ‘active encouragement’ from the TCF for those providers to join the scheme will be effective.

¹ https://comcom.govt.nz/_data/assets/pdf_file/0018/264033/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Expert-report-30-August-2021.pdf, p. 60

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https://comcom.govt.nz/_data/assets/pdf_file/0019/264034/8677028cef8c6e061d950ddb3cca968da7d5128a.pdf, p.14



6. The CRK report also notes that ‘the association considered that the competitive market environment operates as a driver for its membership to provide excellent customer service and to resolve their few complaints promptly and well.’³ However, it is important to emphasise that the entire telecommunications industry operates in an extremely competitive environment and as a result there should be a level playing field between all providers – the fact that some can currently choose to avoid committing to important customer service standards such as membership of the TDRS is evidence that the playing field is currently not level.
7. The Commission notes that ‘there are costs and implications for smaller parties should the scheme be made mandatory’. It is a simple fact that there are costs and implications for *all*/members of *any* industry dispute resolution scheme. This fact alone cannot justify the exclusion of a section of industry. The Commission has provided no clarity as to the scale of costs that justify the exclusion of smaller parties. It is also unclear what is meant by ‘implications’. The costs for becoming a member would be minimal for these providers, given that the fees that TDRS members are required to pay are determined on the telecommunications revenue a particular member earns. As such, costs for the scheme are largely borne out by Tier 1 scheme members. The primary cost for small industry players that are currently not members would be focused internally on compliance. Given that these providers reportedly already put a significant effort into providing ‘excellent customer service’, as expressed by their industry association in the CRK report, being mandated to become members of the TDRS should not be a concern for them.
8. In addition, as we pointed out previously, neither Voyager nor Lightwire are members of the TDRS despite having almost \$20m of qualifying telecommunications revenue between them. It is clear that the relatively minimal costs involved in being a member of the TDRS would not have an adverse impact on these businesses. On the other hand, the fact that their customers haven’t got access to a dispute resolution service – and are likely unaware of the TDRS’ existence given there is no requirement for non-members to raise awareness of the scheme – is a bad outcome for consumers.
9. If costs and other implications are a relevant consideration as to how the scheme should apply going forward, then it is a consideration that must apply to all parties irrespective of their size. The Commission can’t simply consider how costs affect one section of the industry but not others. Nor can it just elect to exclude smaller parties – at odds with its own expert report and without properly examining the effects of this proposal – and cite unspecified costs and implications in support of this outcome.

³ https://comcom.govt.nz/_data/assets/pdf_file/0018/264033/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Expert-report-30-August-2021.pdf, p.59



10. Although the majority of telecommunications industry are members of the TDRS, with over 99% of mobile market consumers and at least 87% of residential fixed broadband consumers having access to the scheme⁴, we are concerned that a significant number of broadband consumers in particular (i.e. 13%) remain unable to access the scheme. That equals to approximately 228,800 New Zealand's residential fixed broadband consumers⁵. The Commission needs to address the extent to which this group of consumers faces a limited choice of broadband providers, and cannot rely on competitive switching to provide a check on smaller parties who the Commission is happy to see omitted from the TDRS.
11. We strongly urge the Commission to strengthen its recommendation on the membership of the TDRS and support the scheme becoming mandatory for all telecommunications providers. Given the Commission's interest in aligning the TDRS with comparable schemes in other jurisdictions (as evident in the number of other proposals), it is worth re-emphasising that telecommunications dispute resolutions schemes are mandatory for all communications providers in both Australia and the United Kingdom.

Integration of wholesalers into the Customer Complaints Code

12. We note that the CRK report states that 'the Complaints Code processes for involving WSMs in complaints are not currently fit for purpose and are diminishing the effectiveness of the TDRS.'⁶ The review also found that TDRS' processes for Wholesale Scheme Members can be cumbersome and can exacerbate the issue of deadlock acknowledgment.'
13. We welcome the Commission's recommendation that wholesalers need to be better integrated into the Customer Complaints Code to 'improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently.' However, the Commission should strengthen this recommendation by clarifying what this 'better integration' should look like and adding

⁴ https://comcom.govt.nz/_data/assets/pdf_file/0018/264033/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Expert-report-30-August-2021.pdf

⁵ The calculation is based on the 2020 Commerce Commission Annual Telecommunications Monitoring report stating that in 2020 there were 1.76m total fixed broadband connections in New Zealand. https://comcom.govt.nz/_data/assets/pdf_file/0030/247377/2020-Annual-Telecommunications-Monitoring-Report-Revised-version-16-March-2021.pdf

⁶ https://comcom.govt.nz/_data/assets/pdf_file/0018/264033/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Expert-report-30-August-2021.pdf, p.61



that wholesalers need to also be financially responsible for costs involved in solving customer complaints that relate to faults on their end.

- 14.** Retailers are currently fully responsible for compensating customers regardless of the root cause of a fault. Here are some practical examples of why the current system is lacks fairness:
 - a. Speed issues that relate to congestion on the wholesaler's network are entirely out of the retailer's hands. Yet, under the current rules, the retailer is responsible for paying compensation to the customer.
 - b. If a customer's broadband service is down for a prolonged period of time due to a known network fault on a wholesaler's network, retailers are expected to credit the customer back for the loss of service for that time (at a minimum). While we completely agree that the customer needs to be compensated accordingly, this is problematic in two ways:
 - i. Firstly, the retailers are required to pay for issues that are completely out of their control.
 - ii. Secondly, the lack of financial accountability acts as a disincentive for wholesalers to meaningfully engage in resolving issues quickly. There are currently no consequences for wholesalers that act slowly and take inordinate amount of time to respond to requests for assistance from retailers. Making wholesalers financially responsible for complaints that related to their network is key for meeting the Commission's desire for quicker and more efficient resolution of issues.
 - iii. Thirdly, wholesalers are not subject to any incentive to address underlying and systemic issues affecting consumers. Wholesalers are insulated from accountability for these issues and it falls to retailers to try to effect change through service level commitments. These is no substitute for wholesalers taking ownership through TDRS for things that they alone control.
- 15.** According to the Research New Zealand study on telecommunications retail service quality, almost a third (31%) of consumers experienced a 'service performance' issue (i.e. an issue with the speed or stability of their broadband service, or a fault) in the past 2 years.⁷ This was a top issue reported in relation to broadband services. Clearly, it is critical that wholesalers are fully accountable for related faults.
- 16.** It is not right for retailers to have to bear the cost of the resolution of complaints that have nothing to do with retailers' services and which retailers can do nothing to prevent or control. Pretending otherwise denies the reality of structural separation within the

⁷ Research New Zealand Consumer Telecommunications Survey, July 2021, p. 32



industry and serves as another example of the asymmetric approach in the telecommunications industry regulations around retail service quality. If the Commission is serious about improving outcomes for consumers, wholesalers need to comply with the same principles.

17. We also urge for industry complaint statistics to be reported more accurately. Currently, complaints raised to the TDRS must be assigned to a retailer first, even if the complaint solely relates to a network issue from a wholesaler. Having such cases included in the overall complaint statistics of the retailer creates an inaccurate picture as things that arise purely from a wholesalers' service failure are attributed to retailers, who are then held accountable for a body of complaints about matters completely out of their control. Worse, attributing these matters to retailers creates the incorrect impression that they are things within retailers' power to control.
18. Furthermore, it can currently be very difficult for retailers to access wholesalers during the complaint handling process before the complaint reaches the TDRS. While there is a set process, it is not always straightforward – it is very constrained and outcomes are often inconsistent. This is one of the main causes of the CRK report's findings outlined above in paragraph 12. This is also reflected in the findings of the Research New Zealand Consumer Telecommunications Survey, in which consumers reported difficulty identifying the source of service issues and whether they are caused by wholesalers or retailers. The survey states that the service issues that had the “biggest impact” on consumers experience was the speed or stability of their internet service, or a fault.⁸ Wholesalers play an obvious role in ensuring network stability and in the cause of faults – and it's critical that they are fully integrated into the TDRS to ensure that the impact they have on consumer experience is recognised and addressed.
19. Of consumers who experienced an issue with their service performance, almost half (49%) said it took ‘a lot of effort’ to get the issue resolved. Meanwhile, 64% reported it took ‘a lot of effort’ to resolve an issue with a new connection/installation.⁹ These figures will not improve unless wholesalers are required to operate within the framework of the TDRS to enable resolution of service issues. Under the current regime, the only point at which wholesalers are formally required to get involved in helping to solve customer problems is when a complaint is deadlocked, and the TDRS can pull them into the Formal Response and Mediation process. Having the ability to get wholesalers formally involved in the complaint handling process much sooner (before it reaches the TDRS) is crucial for getting quicker complaint resolutions.

⁸ Research New Zealand Consumer Telecommunications Survey, section 5.2.

⁹ Research New Zealand Consumer Telecommunications Survey, July 2021, p. 35



20. One way to achieve this would be strengthen the requirements around the use of online portals through which retailers and wholesalers currently tend to communicate during complaint resolution process. While there are currently options to 'escalate' complaints, responses from wholesalers are often scattershot and erratic. We propose that service standards are added to the Customer Complaints Code, including set timeframes by which a wholesaler is required to meaningfully engage with retailers on service issues, with an option for speedier resolution of urgent cases. The current 'best effort/ad hoc' type engagement consistently leads to delays in resolving issues and a more formalised way in which wholesalers are required to engage is clearly necessary (in addition to financial accountability, as outlined above).
21. We will be putting these proposals forward in the review of the Customer Complaints Code, and urge to Commission to ensure that regulatory approval of the reformed Code is provided only if there is meaningful change to integrate wholesalers in the complaint handling process.

TDRS jurisdiction scope

22. In principle, we agree with the proposals to widen the scope of the TDRS jurisdiction. However, we have some specific concerns that need to be considered before this change is finalised.
23. **Complaints relating to equipment sold by a telecommunications provider to a consumer (Clause 18.1.14).**
 - a. Further clarity on this is needed. Under the current Customer Complaints Code, Clause 18.1.14 under Exclusions from Scope reads: 'to extend that the grievance relates to domain names and would be in the jurisdiction of the Office of the Domain Name Commissioner.' However, it appears that the Commission's intent for this change refers more closely to Clause 18.1.4, which reads: 'if it relates to equipment and/or applications the Customer owns which the Scheme Member does not support'.
 - b. We have some concerns about removing this exclusion completely. This change would mean that complaints relating to *any* customer equipment would need to be considered, which could conceivably include thousands of Wi-Fi capable devices of which we would have no knowledge of the support and operating requirements. This could also mean retailers becoming responsible for ONT, cabling, issues with customer wiring, MDU connection issues etc. We therefore propose that if this change is made, further specification is included



on what equipment would be covered. We would support inclusion of equipment that is provided by Vodafone.

- c. Further consideration is also needed on whether mobile devices should be explicitly excluded from the scope. When a consumer buys a mobile phone, they get certain protections under the Consumer Guarantees Act (CGA). These include that the mobile phone will be of acceptable quality, including being free from minor defects, fit for purpose, safe and reasonably durable. However, when a consumer returns a phone to the retailer, or where a device fails 'out of the box', the manufacturer is under no legal duty to bear the cost of repairing or replacing it. In New Zealand, the question of who pays for a manufacturing defect is a commercial one between the manufacturer and retailer. This contrasts with the position in Australia, where the manufacturer is legally required to bear the cost. Some complaints relating to mobile device failure are already considered by the TDRS. Although there is a limited prospect of having device manufacturers bound by the TDRS, the Commission needs to be aware that there is a significant and increasing gap between what retailers have each been able to negotiate with device manufacturers, and the requirements of the CGA as reflected within the TDRS. There is a strong case for amending existing rules to compel device manufacturers to come into line with the operation of New Zealand consumer law.

24. Complaints relating to the extent of network coverage (Clause 18.1.6).

- a. If this is to be brought into the TDRS jurisdiction, then some clear statements need to be included in the Customer Complaints Code to determine what specific network coverage complaints can be considered. Currently, no provider purports to have 100% coverage and we are not required to do so. In addition, where mobile communications are concerned, the laws of physics mean that even in areas where coverage is available, there will be circumstances where service cannot be provided (including in-building coverage). Modern building materials can be very effective at blocking mobile communication signals. In general, the higher the mobile communications frequency the shorter the range, and the more susceptible the signal will be to interruptions from even the most standard building materials.
- b. The majority of coverage-related complaints that we get are of the form 'You don't provide mobile/HWB/RBI coverage at X address' to which our only answer is 'That is correct'. In a lot of these cases, the only fix would be to build another tower (which is not a realistic expectation) or to re-orient where a tower points to which may fix the complainant's issue but will cause other customers to lose



coverage. Although we have a programme of continuous investment in network assets, any expectation that network providers must adjust this programme to meet the requirements of individual customers, or engage in non-economic investments, is plainly unreasonable.

- c. As such, it is hard to see what can be achieved by allowing all complaints relating to network coverage to go through a formal response process or mediation. Allowing complaints like this to be ruled in jurisdiction would give customers a false hope that the TDRS will be able to force the network provider to build a new tower or add more capacity. This is simply not how investment cases are made.
- d. Nevertheless, it could be useful to allow certain types of network complaints to be within jurisdiction, such as:
 - i. Where a customer used to have good coverage but that suddenly changes. While we may not necessarily be able to fix this, the formal process would require providers to provide an explanation to the customer.
 - ii. Where a customer's service becomes degraded, noting that degradation can occur due to no fault of the service provider. For example, if a group of customers is served using the same mobile communications resources with finite capacity, and each customer increases their demands of those resources (e.g. by using more data at peak times) then each customer will notice a degradation of service quality.
 - iii. Where the provider's website indicates that the customer's address is covered by 4G/5G, but it is not the case in practice.

- e. For complaints about network coverage to be considered, there would also need to be much greater involvement from the Wholesale Service Members. We note that there is currently no mention in the Commission's report of wholesalers' involvement in relation to jurisdictional exclusions.

25. Complaints relating to broadband congestion or speed (Clause 18.1.21).

- a. Our view is that it is reasonable that the TDRS should consider speed-related complaints under certain conditions. For this to be workable, the following changes are needed:
 - i. Wholesalers must be brought into the resolution of speed complaints. The vast majority of network speed issues are determined by, and therefore only resolvable by, wholesalers.



- ii. A common model by which speed statements are presented to customers would need to be adopted by the entire industry.
 - iii. This model needs to be independently verifiable. Using SamKnows could be a solution if greater rigour and consistency is assured around how it measures broadband performance and is consistent with real-world experience by most consumers. Currently, testing by SamKnows is carried out using hard-wired connections and measures performance to the router/modem. This does not reflect the typical experience of most end users, who experience broadband services via WiFi connection.
 - iv. There needs to be formal recognition that conditions experienced by individual customers which have an impact on their service speed will vary, including due to factors that network operators do not control (e.g. how the customer is connecting their devices (WiFi or hard-wired); what modem/mesh WiFi solution the customer is using; what other devices or environmental conditions are in their homes and might impact the performance of the WiFi and therefore speed; the type and age of the devices the customer is connecting with (e.g. an iPad2 from 2011 with WiFi4 won't get the same speed and performance as a 2021 iPad Pro with WiFi6.))
 - v. See Vodafone's response to the Commerce Commission's open letter on advertising of alternative services for further considerations around advertising of speeds¹⁰.
26. We also urge the Commission to reconsider the timeframe for implementing this recommendation of widening jurisdiction scope. The current proposal is that this change will need to be implemented by December 2021. However, we note that this is not a final report and we are therefore treating these recommendations as indicative. This means that we will be unable to start putting resources into making associated changes until the final recommendations are released by the Commission. The final report will be published in November 2021, just a month away from the proposed implementation deadline for the expansion of the TDRS jurisdiction scope. We therefore request that this deadline is extended until at least 31 March 2022 to provide us with sufficient time to prepare for these changes.

¹⁰ Vodafone Aotearoa response to the Commerce Commission's open letter on marketing of alternative services, 27 August 2021



Deadlock period

27. We agree with the proposal to reduce the deadlock period for the TDRS from the current six weeks. However, we recommend that it is shortened to 15 working days instead, as the proposed 10 working days is too short.
28. Crucially, it is important to distinguish whether the new model would mean 'a complaint older than X working days can be deemed deadlocked if the customer wishes' or whether 'any complaint over X working days is automatically deadlocked'. We support the former, as customers should have the ability not to deadlock a complaint if they are happy with the progress being made by their provider in resolving the issue.
29. This is important because some complaints may not be possible to be resolved within 10 or 15 working days. This would include:
 - a. Complex faults, particularly speed-related issues.
 - b. Intermittent faults, which can sometimes only be addressed at the time of their occurrence, which may not necessarily be very frequent.
 - c. Network coverage questions.
30. Our concern is that automatically deeming complaints as deadlocked too early risks pushing the customer into a process which is not well suited to coping with an ongoing issue. Typically, when a complaint is deadlocked, this process is followed:
 - a. The TDRS asks the customer to provide their written submission regarding the complaint (within 5 working days).
 - b. The TDRS then provide the customer's statement to the provider, who has 10 working days to issue a formal response.
 - c. Once this is received, the TDRS determines if the complaint is within jurisdiction (within 2 working days) and then a mediator is appointed (within further couple of working days).
31. This means there is a period between 15 – 20 working days after the complaint is deadlocked when the customer and their retail service provider do not interact. This makes sense in cases where the two parties have genuinely reached an impasse. However, if we are forced into that state of impasse after 10 working days when we have not yet completed our attempts to fix the issue, then there will be further 15 – 20 working days during which the customer's issue is still ongoing and we cannot take any meaningful action to resolve it.
32. Another way of avoiding this would be to introduce an intermediate stage between 'Complaint' and 'Deadlock' which would involve the TDRS being allocated to observe complaint handling. The stage could formally be called 'Observation' and be invoked after 10 or 15 working days of the complaint being made. During this stage, the TDRS



observer would have to be looped into all communication between the customer and their provider. Their role would be to:

- a. Ensure the provider is doing everything they can to solve the complaint.
 - b. Support retail service providers in engaging wholesalers when their participation is needed to fix a fault.
 - c. Ensure the customer is engaging meaningfully.
33. If the TDRS observer felt that the provider was not attempting to solve the complaint in a meaningful way, they could deadlock the complaint at any stage.
34. This would allow the TDRS to be involved in the complaint handling in a way that would reassure customers that their retail service provider is acting in good faith and would help retailers get past any roadblocks with wholesalers, consequently helping to get issues resolved quicker.

Other considerations

35. **Timing of Phase 1.** The Customer Complaint Code and Terms of Reference (ToR) should be reviewed before other changes currently proposed under Phase 1 are implemented. This is needed so that industry do not in effect become 'codeless' whilst trying to put the Phase 1 recommendations into practice before the Code and ToR are aligned.
36. **Complaints relating to the 111 Contact Code and Copper Withdrawal Code (DR24).** We agree with the proposal to include related complaints within the jurisdiction of the TDRS. However, complaints relating to these Codes need to be reported separately by Fairway. As outlined in detail in our response to the Commission's open letter on marketing of alternative services¹¹, a lack of alignment of communication approaches between Chorus' copper withdrawal and Spark's PSTN shutdown is the main source of confusion for customers and subsequent complaints. It is important that related complaints that are often out of Vodafone's hands are therefore reported separately.
37. **Consumer ability to appoint a lawyer in relation to a complaint (DR24).** We agree that consumers should be able to appoint a lawyer to advise on their behalf, but not to act on their behalf (similar to the rules for the Disputes Tribunal). Retail service members should not be required to cover the costs for legal advice should consumers wish to appoint a lawyer.
38. **Consumers to have longer periods to access the scheme and to respond to offers of resolution from their provider before a complaint can be closed (DR24).** We agree that consumers should have a longer period to access the scheme but consideration needs

¹¹ Vodafone Aotearoa response to the Commerce Commission's open letter on marketing of alternative services, 27 August 2021



to be given to how long retail service members can retain information in line with the requirements of the Privacy Act and therefore what information might be held to support a complaint.

39. Compensation limits to keep pace with those of the Dispute Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal (DR24). We support this recommendation while noting that if the remedies available are consistent with the DT, there should be recognition that once a complaint has been determined by either the TDRS or the DT, then a customer should not have the ability to pursue a complaint with the other to avoid double handling and excessive compensation.

Confidentiality

40. Confidentiality is sought in respect of the information in this submission that is contained within square brackets and highlighted in red (**Confidential Information**). Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the following grounds:
- the Confidential Information is commercially sensitive and valuable information which is confidential to Vodafone; and
 - disclosure of the Confidential Information would be likely to prejudice unreasonably the commercial position of Vodafone.
41. We ask that the Commission notify us if it receives any request under the Official Information Act 1982 for the release of any part of the Confidential Information, and that the Commission seek and consider its views as to whether the Confidential Information remains confidential and commercially sensitive before it responds to such requests.

Contact

42. Please contact the following regarding any aspect of this submission:

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