

Submission on Marketing Alternative Services to Consumers – Open Letter

27 August 2021

C H ● R U S

Executive summary

- Chorus supports the Commerce Commission's (**Commission**) work to improve retail service quality (**RSQ**) outcomes for consumers. We agree with the Commission that urgent consumer protections are needed because retailers are actively marketing alternative telecommunications services to consumers on copper-based services, but not all retailers are fully informing consumers about their technology choices.
- While the urgency of the issues stem from the PSTN shutdown and the commencement of copper withdrawal, the impact for consumers is much broader. Consumers deserve accurate and transparent information about their phone and broadband options, but not only when they are migrating off copper. When presented with information from the industry consumers should be able to trust that they are being fully informed and feel empowered to make decisions that best suit their household needs.
- Experience to date shows that as a whole, the industry is not consistently delivering good outcomes for consumers. Given the complex and divergent commercial drivers and interests across the New Zealand Telecommunications Forum (**TCF**) on these issues, and their time critical nature, we think a regulated approach is the most appropriate in these circumstances.
- We recommend the Commission adopts a regulated RSQ code that gives effect to the outcomes and principles outlined in its letter. We support all the principles and consider that the industry is best placed to develop these into a code that the Commission adopts and oversees. To assist the industry, via the TCF, and to develop the code within 60 days, the Commission should confirm the outcomes it seeks as soon as possible.
- We encourage the Commission to consider these issues within the wider RSQ framework and ensure that any industry gaps can be appropriately addressed within reasonable timeframes for the benefit of consumers.

Chorus context

1. This is Chorus' submission on the Commerce Commission's (**Commission**) Letter regarding the marketing of alternative services to consumers during copper/PSTN withdrawal, dated 4 August 2021 (**Letter**). We aim to ensure consumers are well informed and are able to benefit from retail competition for broadband services, supported by our open access wholesale network.
2. New Zealand's fibre network is among the best in the world and accessible to more than 85% of the country. Our network supports the ever-growing demand for fast connectivity and data heavy applications. During the most recent COVID-19 lockdown we saw unprecedented levels of data usage on the Chorus network hitting a throughput peak of 3.75Tbps. This represents a 33 percent increase in capacity demand and is being delivered with no congestion.
3. While the majority of New Zealanders can benefit from fibre services, many remain on legacy copper services. As we begin our copper withdrawal programme in targeted areas where fibre services exist, consumers have the opportunity to move to alternative technologies. Consumers impacted by our copper withdrawal have the comfort of knowing that this can only be done if fibre is available and that we must meet specified consumer protection obligations under the Copper Withdrawal Code (**CWC**).
4. In addition to requisite notice periods and notice requirements, these protections include things like key information, which helps consumers to have meaningful conversations with their retailer and / or shop around before deciding what suits their households' needs. If a consumer places a fibre order, we cannot withdraw copper until they have been connected (subject to a few exceptions).
5. These important consumer protections are provided by Chorus and referenced in our communications. However, they do not apply to communications that consumers receive from the wider industry. This means that consumers have no guarantee that retailers are fully informing them when making the important choices required during copper migration.
6. Given broader market forces over the past year, including the loss of roaming revenue for mobile network operators (**MNOs**), greater reliance on high-speed connectivity due to COVID-19, and Spark's PSTN shutdown, there are differing incentives across the industry. While in general the industry has been working well together to keep New Zealanders connected, in this environment there is the potential for consumers to receive information that may not support a fully informed decision about the options available.
7. We believe consumers deserve better. The whole industry should have an obligation to provide clear transparent information to consumers.

A Commission Code is required to improve consumer outcomes

8. We welcome the Commission's proposals to help ensure consumers on copper-based services can make informed decisions about the alternative services that best suit their needs. The Commission has outlined three options that range from voluntary guidelines, to either an industry or Commission RSQ Code. Each option includes outcomes and principles to improve outcomes for consumers that are migrating off copper services.
9. We recommend the development of a regulated RSQ code, and we support the proposed outcomes and principles outlined in the Commission's letter. A regulated approach is the most appropriate way to ensure the right outcomes for consumers are achieved, and consistently applied.
10. We agree that the best way to achieve this is to bring retail marketing conduct into line with key principles – and that immediate action is required. While we understand that the Commission's proposals target a specific need, our comments and recommendations should be read to apply to retail activity more generally, and not limited to the circumstances of copper or PSTN withdrawal.
11. Consumers have been at risk of poor retail outcomes for too long. We have witnessed retailers make false statements about copper withdrawal and PSTN shutdown – including consumers being incorrectly informed that they are impacted. We have also seen inaccurate information about the reliability of fibre services included as part of sales tactics to force migrate consumers to fixed-wireless services, and unsubstantiated claims about 5G broadband speeds. Consumers shouldn't be burdened with the requirement to "call and opt-out"¹ or fact-check marketing claims.
12. Telecommunications services can be complex to understand and the least the industry can do is to ensure simple, fair, and accurate information and treatment for consumers when they are considering their technology options. It should not matter if a consumer is impacted by a regulated process (i.e., Chorus' copper withdrawal) or an unregulated process (i.e., Spark's PSTN shutdown).
13. Given the complex and divergent commercial drivers and interests across the TCF on these issues, and the time critical nature of these issues, we think a regulated approach is the most appropriate in these circumstances.
14. We consider that the industry is best placed to produce a first draft of the RSQ code and provide it to the Commission to adopt (amending where appropriate) and oversee its implementation and enforcement. The industry is best placed to create a first draft because of its knowledge and understanding of the relevant systems and processes. To help ensure the industry can meet the Commission's short timeframe of 60 days, we recommend the Commission clearly sets out its expectations and outcomes for the RSQ code as soon as possible.

¹ See Spark's comments on their wireless sales approach: <https://www.nzherald.co.nz/business/telcos-warned-about-marketing-tactics-as-copper-turned-off/FVUAMGFJSOFQTQUZIGHV2FXBOI/>

15. The proposed principles essentially aim to ensure consumer protections are consistent regardless of the provider of the underlying copper service. Given that the CWC was drafted in consultation with the industry, is well understood and largely endorsed - it should be relatively easy for the industry to adopt more broadly.
16. In addition, regulatory oversight is consistent with international practice. Overseas regulators already oversee information retailers provide consumers, such as ensuring “fair and transparent” information, comparison tools and guidance for speed claims (i.e., the UK’s Ofcom and Australia’s ACCC).²
17. In New Zealand, we continue to see the headline maximum theoretical speed claims, but retailers are less forthcoming with a peak speed or guaranteed speed. There also appears to be a lack of standard definitions for unregulated services, such as the different kinds of mobile broadband and fixed-wireless services. The reason for these gaps in New Zealand could be because of a lack of regulatory oversight and / or intervention to date. We encourage the Commission to consider whether overseas examples are relevant for New Zealand consumers.

The broader framework for RSQ and future work

18. We understand that this proposed Code is part of a broader programme of RSQ work. As a matter of good regulatory practice, we encourage the Commission to consider how the proposals will fit in the broader RSQ framework, particularly where there may be overlaps with other codes and where there are gaps that require further attention.
19. For example, the 111 Contact Code and the TCF Industry Product Disclosure Code are relevant to the current proposal and the former explicitly mentioned in the principles. While we support the principle that retailers must meet their 111 Contact Code obligations, we do not support the prospect of ‘double jeopardy’ where the Commission could penalise retail non-compliance through two codes. This would not be appropriate or good practice.
20. We also acknowledge that aspects of the TCF Industry Broadband Product Disclosure (**BPD**) Code may cover some of the proposed principles, but the Code does not directly cover copper withdrawal related communication or fixed-wireless broadband. However, the scope may be extended in the near future but the Commission’s RSQ work has slowed down current review and update to the BPD Code.
21. Another area that overlaps, and is also a broader issue, is the lack of comparison tools for broadband plans. As the Commission knows, there is work underway to consider a pathway to a future consumer data right with a mobile comparison framework to support this. However, there is no such tool or framework being considered for broadband plans.
22. The focus on mobile data and inertia of mobile plans may be a bigger issue at present but we encourage the Commission to consider the need for a future broadband plan comparison tool. This is partly because retailers are continuing to use their mobile networks to compete with fibre broadband. While consideration of

² Ofcom’s fairness for consumers: <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/broadband-and-phone-firms-put-fairness-first>; ACCC’s guidance for broadband speed claims: <https://www.accc.gov.au/consumers/internet-landline-services/broadband-speeds#busy-period-speed-information>.

“price” in isolation may make broadband plans appear competitive, other service quality comparisons may not be as competitive – and are not as apparent to consumers.

23. We look forward to working with the Commission as it progresses its RSQ work.