

30 September 2022

By email to: Mobile Stakeholder Group
Broadband Stakeholder Group
Consumer Stakeholder Group

Tēnā koutou

Increasing consumer awareness of TDRS Membership – Response to submissions and next steps

Introduction

1. Thank you for your responses to our letter of 18 July 2022 in relation to proposed Telecommunications Dispute Resolution Scheme (**TDRS**) membership disclosure requirements.¹
2. In our letter, we expressed the view that all consumers who need help resolving a dispute with their telecommunications service provider should have access to the free and independent service provided by TDRS. TDRS is the industry dispute resolution mechanism established under the scheme of the Telecommunications Act 2001 (the **Act**).² We also expressed our concern that, while most major providers are members of the TDRS, many are not, leaving an estimated 120,000 consumers locked out of the benefits and protections of the industry scheme.³
3. In our letter, we proposed three options for increasing the level of consumer awareness and understanding in this area:
 - 3.1 Maintaining and publishing a list of non-members on the Commission's website;
 - 3.2 Introducing disclosure obligations requiring non-members to inform all new (or renewing) customers that they do not belong to TDRS before sign-up (or

¹ A copy of our 18 July 2022 open letter is available at:
https://comcom.govt.nz/_data/assets/pdf_file/0036/287892/Increasing-consumer-awareness-of-TDRS-non-membership-Open-Letter-18-July-2022.pdf

² Refer to Telecommunications Act, s 232.

³ Commerce Commission estimate based on our Annual Market Monitoring.

renewal) and remind all existing customers that they do not belong to TDRS annually; or

- 3.3 Combining options 1 and 2 above into an integrated pathway.
- 4. Having considered submissions, we have decided to adopt a modified version of Option 3:
 - 4.1 Publishing a list of both members *and* non-members (alongside information for consumers about the dispute resolution pathway that applies in each case);
 - 4.2 Taking a phased approach to publication of the list to allow smaller providers more time to decide whether to become a member of TDRS and prepare to meet potential disclosure requirements;
 - 4.3 Widening disclosure requirements so that *all* providers must disclose the dispute resolution pathway that applies in the event of any dispute; and
 - 4.4 Focussing disclosure requirements on new and renewing customers and dropping, for now, the proposed annual reminder to existing customers.

Summary of submissions

- 5. We received submissions from a cross-section of industry and consumer group stakeholders.
- 6. On balance, submissions demonstrated support for:⁴
 - 6.1 Measures to help consumers better understand the implications of their telecommunications service provider belonging, or not belonging, to TDRS;
 - 6.2 The principle that all providers should be subject to the same requirements in the best interests of consumers; and
 - 6.3 Option 3 as the preferred way forward (involving a staged approach beginning with publication of a list of non-members and moving on to disclosure obligations if necessary).
- 7. We have published copies of the submissions we received, along with a summary of our response to submissions, on the Commission's website.

⁴ We have published copies of the submissions we received, along with a summary of our response to those submissions, on the Commission's website: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/retail-service-quality?target=documents&root=290923>.

The way forward: Option 3 with modifications

8. Having considered submissions, we have decided to move forward with a modified version of Option 3, which incorporates the following changes:
 - 8.1 **Publishing a list of TDRS members and non-members:** We agree with submitters that the list should both inform consumers that their provider is a member of TDRS, as well as alert consumers when their provider is not. Listing both members and non-members will be a more balanced way of achieving our transparency objectives than a list of non-members alone. When publishing the list, we will explain that the dispute resolution pathway is different, depending on whether a provider is a member of TDRS. Customers of member providers have access to facilitated resolution through TDRS while customers of non-members need to go to the Disputes Tribunal or District Court.
 - 8.2 **Taking a phased approach to publication of the list of members and non-members:** While we do not agree that smaller providers should be exempt from disclosure requirements, we accept that smaller providers may require more time to decide on their position and prepare to meet any requirements, compared with larger and better resourced providers. We therefore intend to take a phased approach to publication, by first publishing a list of providers that meet the Telecommunications Development Levy (TDL) revenue threshold of \$10 million and adding smaller providers later. The TDL threshold is well known in the industry and provides a useful proxy of relative ability to meet disclosure requirements in the timeframes set out below.
 - 8.3 **Widening any disclosure requirements that may subsequently become necessary to apply to all telecommunications providers:**⁵ Our objective is to ensure that consumers understand what dispute resolution procedures apply with different providers. Accordingly, non-member providers will need to disclose that their customers do not have access to TDRS and must go to the Disputes Tribunal or District Court to resolve any disputes. Similarly, member providers will need to disclose (to the extent they do not already do so) that their customers have access to TDRS to resolve any disputes.
 - 8.4 **Focussing any disclosure requirements that may subsequently become necessary:** We intend to keep the key obligation that, before any contract is signed, all new (and renewing) customers must be told what dispute resolution pathway applies. Members must disclose that their customers have access to TDRS, while non-members must disclose that their customers need to go to the Disputes Tribunal or District Court. This will ensure that

⁵ If we consider it necessary to introduce obligations, we envisage implementing them by way of a Commission code under section 236 of the Telecommunications Act 2001, so that they are binding on and enforceable against all providers. If a Commission Code is deemed necessary, we will follow our normal consultation process, prior to any implementation.

consumers sign-up on a fully informed basis. We agree with submitters that an ongoing annual reminder to all existing customers is not necessary at this stage.

9. We will therefore proceed as follows:
 - 9.1 For providers who meet the current TDL revenue threshold of \$10 million (**larger non-members**):
 - 9.1.1 The Commission will publish a list of TDRS members and larger non-members who still remain outside the scheme on **1 December 2022**;
 - 9.1.2 The Commission will review the position in **April 2023** to determine whether further disclosure requirements are necessary; and
 - 9.1.3 The Commission will, if necessary, look to exercise its code making powers to impose disclosure obligations on larger providers to improve transparency for consumers.
 - 9.2 For providers who do not meet the current TDL revenue threshold of \$10 million (**smaller non-members**):
 - 9.2.1 The Commission will publish a list of TDRS members and all non-members, including smaller non-members, who are still outside the scheme on **1 June 2023**;
 - 9.2.2 The Commission will review the position in **September 2023** to determine whether further disclosure requirements are necessary; and
 - 9.2.3 The Commission will, if necessary, look to exercise its code making powers to impose disclosure obligations on all providers to improve transparency for consumers.

Conclusion

10. We stress again our view that all consumers who need help resolving a dispute with their telecommunications service provider should have the right to access TDRS as the industry scheme established under the scheme of the Act.
11. We therefore encourage all non-members to join TDRS. Doing so will ensure that the customers of these providers have the same rights as all other telecommunications consumers in New Zealand.
12. More generally, we encourage all providers to be as transparent as possible about the dispute resolution pathway that applies when consumers sign-up with them, so that customers are clear about what they can expect in the event of a dispute.

13. Please contact Andrew Young (andrew.young@comcom.govt.nz) if you have any questions in relation to this letter.

Ngā mihi nui

A handwritten signature in black ink, appearing to read 'Tristan Gilbertson', followed by a period.

Tristan Gilbertson

Telecommunications Commissioner