

C H ● R U S



**Submission on the draft report to Telecommunications
Dispute Resolution Limited on recommendations for
improvements to TDRS**

29 November 2024

Submission

1. This is a joint submission from Chorus Limited, Enable Networks Limited, and Tuatahi First Fibre Limited (together, **we**). We welcome the opportunity to provide feedback on the Commerce Commission's (**Commission**) draft report to Telecommunications Dispute Resolution Limited on recommendations for improvements to Telecommunications Disputes Resolution Scheme (**Scheme**).
2. We agree with the Commission that in order to maintain a competitive market that delivers consumer benefits, it is essential that consumers have confidence in their ability to engage with their service providers effectively and that they can seek recourse through an independent and impartial means of resolving complaints and disputes.¹
3. It is also critical that consumers have accurate upfront information during their broadband shopping journey to enable meaningful comparisons between services and price-quality trade-offs to inform purchasing decisions. Where a service materially fails to provide the performance promised, consumers need to be informed about that failure and understand what their rights are in those circumstances - with any dispute brought to their retail service provider or (where unresolved) the Scheme. The Commission's work to improve the *Marketing alternative telecommunications services during the transition away from copper Guidelines* (**Guidelines**) and *Measuring Broadband New Zealand* programme reporting is key to securing this for consumers. We have separately made submissions on the changes needed to improve retail service quality settings in response to the Commission's proposed amendments to the Guidelines.²
4. We are pleased the Commission has found that the changes made to the Scheme in relation to wholesale members have led to substantive improvements for consumers,³ and that no further recommendations have been made regarding wholesalers' role in the Scheme. This is appropriate given the regulated market separation between the provision of wholesale and retail fibre services - where wholesalers provide access services to retailers, and retailers offer retail services to, and own the relationship with, consumers.
5. We **support** the Commission's recommendations relating to further raising consumer awareness of the Scheme, ensuring that all groups have equal access to and usage of the Scheme, and increasing membership of the Scheme. It is important that all consumers are aware of and can access the Scheme.
6. We also **support** the Commission's recommendation that the Scheme's data collection and analysis be improved, including collection and analysis of granular issue categorisation and complaint outcomes. Accurate complaint categorisation is critical for ensuring consumer pain points are identified and can be

¹ Commerce Commission, *Draft report to Telecommunications Dispute Resolution Scheme Limited on recommendations for improvements to TDRS*, (8 November 2024) at para 23.

² To be published on the Commission's website: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/marketing-of-alternative-services-to-consumers-during-copperstn-withdrawal>.

³ Commerce Commission, *Draft report to Telecommunications Dispute Resolution Scheme Limited on recommendations for improvements to TDRS*, (8 November 2024) at para 173.

appropriately addressed (including systemic issues), and to assist with the Scheme's administrative activities, such as budget setting.

7. It is, however, important that recommendations are proportionate to the issues the Commission is trying to solve to avoid disproportionate cost to the Scheme and the industry. Keeping costs proportionate has the benefit of keeping the Scheme attractive to new members to join and mitigates risk of existing members leaving to join an alternative scheme with a lower cost structure.
8. It is also important that the parameters of the Scheme do not encroach on providers' commercial decisions relating to network coverage in response to competition.
9. We **recommend**:
 - a. **The new TDRL governance structure remains unchanged until the effectiveness of the new structure can be evaluated.** The extensive changes to the Scheme's governance arrangements following the Commission's 2021 review were only implemented in, and have been operational since, July 2023. We have not seen evidence in the Commission's draft report to justify any further changes to the Scheme's governance structure, and do not consider there to be an issue that needs solving. We recommend providing the Scheme with a reasonable timeframe to properly embed its operation and governance practices before reviewing and recommending any further changes to its structure. Further changes at this stage risk additional costs with no identified or measurable benefit to consumers.
 - b. **Maintaining the current exclusion relating to network coverage.** The exclusion relating to network coverage does not preclude any complaints that should be within scope of the Scheme. The Commission's Guidelines, along with the industry's implementation of those Guidelines, explicitly ensure that consumers can exit a service without penalty and can complain to the Scheme if they do not receive the performance they were promised (i.e. where the service materially fails).⁴ This addresses the primary concern regarding network coverage – that a provider's claimed coverage in an area cannot (or can no longer) support the service offered.

However, it is not appropriate for the Scheme to adjudicate providers' network investment and divestment decisions. These decisions are made in response to competitive forces and market dynamics - a competitive broadband market relies on this. It is important that market entry or expansion is not deterred by concerns over potential adverse findings from the Scheme where (for example) a service is removed or retired because it is no-longer economically viable to supply or maintain.

The existing exclusion relating to network coverage preserves this without precluding complaints that are appropriately within the scope of the Scheme and must therefore be maintained. For completeness, we note

⁴ Commerce Commission, *Marketing alternative telecommunications services during the transition away from copper Guidelines*, (8 November 2021) at Outcome 3 clause (g), and New Zealand Telecommunications Forum, *Code for the Marketing of Broadband Services*, (October 2023) at Section 5.

complaints relating to the Copper Withdrawal Code are explicitly within jurisdiction of the Scheme.⁵

- c. **Removing or amending proposed reporting to the Commission.** The Commission proposes recommending that the Scheme reports annually or six-monthly to the Commission on various aspects of the operation of the Scheme and its implementation of the Commission's recommendations. It is unclear what the benefits of this are, particularly given the Commission is required to periodically review the Scheme. In any case, the Commission must balance reporting changes with the introduction of additional compliance costs this would create for the Scheme and its members. We recommend the Commission removes this proposal or amends it to ensure it is streamlined and targeted. For example, whether the information could be reported on annually using the Scheme's annual report for efficiency.

⁵ Telecommunications Dispute Resolution Scheme, *Terms of Reference*, (1 July 2023) at clause 1.4(b).