

18 July 2022

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

Tēnā koutou

Increasing Consumer Awareness of TDRS Non-Membership

Introduction

1. We are writing to request your feedback on options aimed at increasing consumer awareness in relation to the **Telecommunications Dispute Resolution Scheme (TDRS)**.

Summary

2. TDRS is the dispute resolution scheme, established under the **Telecommunications Act 2001 (the Act)**, for the telecommunications sector. We believe that an effective disputes resolution scheme should be available to all consumers who may need it to resolve a dispute with their phone or internet provider.
3. However, under the current rules, consumers can only access TDRS if their telecommunications service provider is a member of TDRS. While almost all major telecommunications service providers are members of TDRS, there are a number of providers who are not, leaving an estimated 120,000 consumers locked out of the benefits and protections of the industry scheme.¹
4. Many of these consumers may not even be aware that they are locked out of TDRS or understand what this means for them when things go wrong with their service provider. This is problematic given the ongoing high level of complaints and disputes in the telecommunications sector.
5. We are therefore considering three options for increasing the level of consumer awareness and understanding in this area. They are:

¹ Commerce Commission estimate based on our Annual Market Monitoring

- 5.1 Maintaining and publishing a list of non-members on the Commission's website;
 - 5.2 Requiring proactive disclosure by non-members to new customers before sign-up and to existing customers on an ongoing basis; and
 - 5.3 Combining both options into an integrated pathway starting with Option (1) and moving to Option (2) later if necessary.
- 6. These three options are all different ways of ensuring that consumers get the information they need to decide to join or stay with a non-member telecommunications service provider on a fully informed basis.
 - 7. We are interested in receiving your views on which of these options you prefer and why.

Background

- 8. Last year, we conducted our first statutory review of TDRS, as required by the 2018 amendments to the Act.
- 9. As a result, we recommended a range of changes to TDRS, designed to further improve the efficiency and effectiveness of the scheme for consumers and the industry.
- 10. These changes are being implemented by the **New Zealand Telecommunications Forum Inc (TCF)** under an agreed roadmap.
- 11. In our view, TDRS should be available to any consumer who may need help resolving issues with their telecommunications service provider, but this is only possible if the provider belongs to TDRS.
- 12. Membership of TDRS is currently voluntary, and while most major telecommunications service providers are members, there are a number of providers who have not joined. This includes some high-profile bundlers of energy and telecommunications services. As a result, there are an estimated 120,000 consumers who are locked out of the industry scheme.²
- 13. Our review of the scheme last year revealed significant concern about consumers being locked out of TDRS and forced to turn to alternatives such as the Disputes Tribunal when things go wrong with non-member providers.
- 14. We noted this concern in our report, recognising the value of a consistent set of arrangements for all consumers, and encouraged increased uptake of TDRS membership.

² Commerce Commission estimate based on our Annual Market Monitoring

15. However, in the period since, there has not been any material increase in TDRS membership or any corresponding reduction in the number of consumers outside the scheme.
16. In our view, this is unsatisfactory, and more active measures now need to be considered to improve the situation for consumers.

Options for Improvement

17. Our key objective is to ensure that consumers know whether a service provider belongs to TDRS and understand what this means for them in the event of a dispute, so that they can make decisions on a fully informed basis.
18. We can see three alternative options for achieving this objective and improving retail service quality for consumers.

Option 1: Commission Disclosure

19. The Commission would provide a period of time (such as 60 days) for non-members to reconsider their position and join TDRS.
20. At the end of this period, the Commission would compile and publish a list of remaining non-members, along with a reminder that customers of these providers are not able to access TDRS in the event of a dispute.
21. The Commission would keep this list up-to-date and published on its website as well as in other relevant Commission communications.
22. This option would be implemented using the Commission's general market monitoring and information disclosure powers.

Option 2: Non-member Disclosure

23. Telecommunications providers who do not join TDRS must provide Disclosure Notices to their customers and prospective customers as specified below.
24. Disclosure Notices must be provided in writing to:
 - 24.1 All prospective customers before entering a contract for the provision of telecommunications services; and
 - 24.2 All existing customers at least once annually.
25. A Disclosure Notice must make it clear to a customer or prospective customer that:
 - 25.1 The service provider does not belong to TDRS;

- 25.2 TDRS is a free scheme for the resolution of disputes between customers and their service providers;
 - 25.3 The service provider's customers cannot use TDRS to resolve any disputes in relation to their telecommunications service and will have to use the court or tribunal process to do so; and
 - 25.4 Customers have the choice of other providers who do belong to TDRS.
- 26. Non-members must maintain records sufficient to demonstrate that they have complied with all relevant Disclosure Notice requirements.
 - 27. We anticipate that these disclosure obligations could be implemented by way of a Commission Code, issued under section 236 of the Act, so that they are automatically binding and backed-up by statutory penalty and enforcement provisions.

Option 3: Combined Pathway

- 28. The Commission begins with Option 1, provides a period of time for non-members to join TDRS, and publishes a list of non-members at the end of that period.
- 29. The Commission then considers whether there has been a sufficient reduction in the number of consumers who remain outside the scheme or whether a move to mandatory disclosure obligations is necessary to improve outcomes for consumers.
- 30. The Commission moves to implement Option 2 disclosure obligations by way of a Commission Code in the event this is considered necessary.

Questions

- 31. As noted above, we are interested in your feedback on the three options we have described above, as well as your views on the following questions:
 - 31.1 Do you agree it is necessary to take steps to increase consumer awareness and understanding in this area?
 - 31.2 Which of the three options outlined above do you prefer and why?
 - 31.3 Are there any other options not considered in this letter?
 - 31.4 Should there be an exemption for smaller providers from any disclosure requirements? If so, on what basis, and what threshold should apply?
 - 31.5 What period of time should be allowed for non-members to join TDRS under Option 1?

31.6 Do you agree that a Commission Code would be the most effective way of implementing disclosure obligations under Option 2?

Conclusion

- 32. We would be grateful for your feedback, and supporting reasons, by 8 August 2022 via email to market.regulation@comcom.govt.nz.
- 33. 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 dark ink, appearing to read 'Tristan Gilbertson', followed by a period.

Tristan Gilbertson

Telecommunications Commissioner