

Item: Cross-submission for Copper Withdrawal Code

To: Commerce Commission

Date: 07 August 2020

From: Liz Hogan, Head of Commercial Services, FairWay Resolution Limited

Code submission

Telecommunications Dispute Resolution Scheme (TDRS) has had the opportunity to consider the submission presented by Utilities Disputes Limited (UDL), and considers it necessary to address points made in the UDL submission.

TDRS has provided a free and independent service to help customers manage complaints about any product or service from their telecommunications provider for over 13 years. Of consumers surveyed after receiving help to resolve their dispute 96% were either very satisfied or satisfied with their TDR experience¹.

Although there is currently no provision within the Telecommunications Act to compel telecommunications providers to be members of a dispute resolution scheme, TDRS current membership captures over 90% of the broadband market and 99% of the mobile market in New Zealand. We have significant experience working with the industry and consumers in resolving disputes that arise within the telecommunications sector, including fibre related disputes.

One of the key issues for consumers will be that customers who have a complaint that falls under the Copper Withdrawal Code (CWC) may also have a separate but connected fibre installation dispute to be dealt with under a separate process under the Customer Complaints Code (CCC). By appointing TDRS as the body to deal with CWC complaints, this would mean that there would be a seamless consideration of complaints and using the industry scheme will prevent expensive jurisdictional debates. In the case where a complaint does not fall under the CWC it could still progress through the CCC seamlessly for the customer. Having all complaints relating to telecommunications under one scheme is efficient and will result in better outcomes for consumers.

Independence

FairWay Resolution Limited is contracted by the New Zealand Telecommunications Forum as the independent Scheme Agent for the TDRS. Externally this service is referred to as Telecommunications Dispute Resolution. This is overseen by a Council which consists of fifty percent consumer and fifty percent industry representation. The Council is chaired by a consumer representative. Of the four consumer representatives, three were appointed by a

¹ [TDR Annual Report 2018-19](#)

selection panel comprised of representatives from Consumer NZ and the Technology Users Association of New Zealand, with the fourth Consumer Representative appointed by the Ministry of Consumer Affairs. The four industry representatives are elected and appointed by scheme members. This process and composition ensures consumer issues are represented with industry experts able to provide subject matter expertise.

Resolution Practitioners are contracted by FairWay Resolution but act independently when writing their determinations. Where customers accept a determination it becomes binding on both parties. If a Customer does not, it can be appealed to the Disputes Tribunal. We are not unaware of any determinations where the Disputes Tribunal has reached a different view to the TDRS Practitioner.

Experience

TDRS is a competent and experienced dispute resolution provider. TDRS has successfully helped resolve telecommunications disputes for over 13 years and has processed over 15,000 complaints and enquires during this time. TDRS Resolution Co-ordinators and Practitioners have a wealth of knowledge and experience, and include former deputy registrars, as well as currently sitting Dispute Tribunal referees and a Tenancy Tribunal adjudicator.

In addition, FairWay has a depth of experience beyond the specialist work it does for telecommunications disputes. FairWay is New Zealand's largest specialist conflict management and dispute resolution company, with over 100 people working across the country and has been resolving disputes for over 20 years. The team includes specialist reviewers and accredited dispute resolution practitioners (adjudicators, facilitators, mediators and conciliators). FairWay handles over 16,000 disputes, reviews and enquiries each. Further information about FairWay's services is included below.

Consistency

TDRS's Scheme Adjudicator determines jurisdiction based on clear guidelines within the Customer Complaints Code. Jurisdiction decisions are unable to be appealed. Position statements, reoccurring issues and regularly published case studies help customers and scheme members self-resolve issues and provide a reference for future determinations.

Accessibility

TDRS allows contact and accepts complaints via phone, post, email, online webform, social media and in person at FairWay offices located in Auckland, Wellington and Christchurch.

Familiarity

All major telecommunications retail providers are members of TDRS. Additionally, all wholesale fibre providers have signed letters of commitment to participate in the TDRS as wholesale scheme members.

Early resolution

The majority of complaints and enquiries (98.1% of contacts between January and June 2020) were resolved or closed directly with scheme members after initial assistance and referral by TDRS. The Customer Complaints Code encourages scheme members to resolve complaints directly with their customer. TDRS supports both parties through their discussions and can step in upon scheme member request, or in situations where no resolution has been reached after 6 weeks. Less than 1% of the complaints received by TDRS between January and June 2020 required a determination be issued.

Sector knowledge

Copper withdrawal is fundamentally a telecommunications issue. Deep and consistent knowledge of this sector and the specific environment of its consumers, providers, regulators and other industry participants is essential to ensure that telecommunications disputes are resolved in a manner that allows the parties involved to move forward. TDRS, as delivered using FairWay's dispute resolution approach, has the necessary and proven capability to resolve disputes specifically in the telecommunications sector.

FairWay Resolution Limited

FairWay Resolution is an employee trust owned company, which provides comprehensive, specialist conflict management and dispute resolution services. FairWay provides services across public and private sectors, handling issues and disputes of all kinds and all levels of complexity; including medical, insurance, financial services, telecommunications, real estate building and construction, insurance, education, family and local government.

As part of its work, FairWay Resolution determines requirements, identifies issues and solutions, and creates dispute resolution schemes that are cost-effective, efficient, pragmatic, and which provide meaningful access to resolution. FairWay has developed approaches to dispute resolution which put at the heart of design the cultural requirements of the parties to any dispute and works with groups of disputants often where there are collective rather than individual issues at the heart of the dispute.

FairWay Resolution leads the development of dispute resolution practices through the use of technology including video conferencing, online services and case management.

FairWay Resolution administers several complaints-based schemes for consumers, including the International Students Contract Dispute Resolution Scheme, and the Financial Dispute Resolution Service.

Through its experience and knowledge FairWay has been able to identify the goals of a well-designed dispute resolution process which include:

- **Accessible.** The process can be accessed in a variety of ways to account for potential location, mobility, sight, hearing and communication difficulties, and is easy to use.
- **Independent.** The process is independent from any decision maker ensuring impartiality.

- **Fair.** Natural justice is observed, and the process is procedurally fair.
- **Accountable.** The process is publicly accountable.
- **Efficient.** The process is proactive and seeks the best way to resolve issues in a time frame appropriate to the circumstances of the dispute.
- **Effective.** The process is appropriate and is periodically reviewed for performance.
- **Appropriate for the audience.** The process considers the unique requirements of the parties which can include cultural requirements and is always considerate of the physical and psychological barriers that prevent people from resolving disputes.