NERA
ECONOMIC CONSULTING

JAMES EVERY-PALMER KC
DPhil (Oxon), LLM (Harv), LLB(Hons), BA(Hons)

Review of the NZCC's proposals for improving customer service in telecommunications markets

Joint report of Dr James Every-Palmer KC and Dr William Taylor

16 March 2023

Contents

1. Introduction and Summary

1. We have been asked by Spark and Vodafone to prepare a report reviewing the legal and economic aspects of the NZCC's proposed intervention to improve customer service outcomes in telecommunications markets. This is a joint report by James Every-Palmer, KC and Will Taylor, Director of NERA Economic Consulting.[1] While this is a joint report, any opinions on legal matters in this report are solely the opinion of James Every-Palmer.

2. The NZCC is proposing to require telecommunications service providers to display at point-of-sale a dashboard displaying rankings on two specific customer service metrics, namely "Speed of resolution" and "Staff helpfulness and knowledge".[2] The motivation for this requirement are concerns that customer service is not "front of mind" when choosing a provider and that consumers may lack suitable information about customer service differences between providers. Section 2 explains the background to the proposed requirement to display the consumer dashboard at point-of-sale in more detail.

3. Section 3 describes the applicable legal framework, the relevant administrative law requirements (including acting pursuant to legal authority, consistently with the statutory purpose, on the basis of material of probative value and proportionally) and widely-recognised principles of good regulatory practice (including ensuring interventions are based on evidence of market failure, subject to cost-benefit scrutiny and proportionate to the problem identified).

4. In summary, whether judged by administrative law standards or good regulatory practice, the proposed requirement to display the consumer dashboard at point-of-sale has a number of serious failings:

    a. **Lack of evidence of a market failure warranting intervention:** As discussed in sections 4 and 5,

        i. Customers face low switching costs and change providers relatively frequently. The risk that poor customer service will cause a provider to lose customers means that, absent and identified market failure, the current level of customer service would be expected to reflect customer preferences.

        ii. Rather than presenting evidence of a market failure, the NZCC has simply made an assumption—based on intuition and anecdotal evidence of customer service problems—that the current level of customer service is inefficiently low.

        iii. The observed market outcomes are at least equally consistent with workable competition than with a market failure and other sources of evidence around customer service (e.g. TDRS complaints data) have not been considered.

        iv. The NZCC has not attempted to undertake any assessment of the costs and benefits of the proposed intervention. There has therefore been no consideration of whether the proposed intervention is proportionate and therefore in line with good regulatory practice.

        v. The NZCC draws on the example of a dashboard showing quality of service rankings in the UK retail banking sector. However, in contrast to the NZCC's proposal, in the UK there was clear evidence that low customer engagement was a serious issue as very few customers switched banks even though they could gain financially from doing so. In

[1] We have been assisted in preparing this report by Cameron Birchall. However, all opinions, errors and omissions in this report are our own.

[2] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para X.17, p. 7.

addition, the measure used in the UK dashboard is a broader measure of outcomes, compared to the narrow measures proposed by the NZCC.

b. **The proposed scores may be a poor proxy for "customer service".** As discussed in section 6:

   i. An important dimension of customer service is avoiding the need for customer service. Yet, a provider that invests in avoiding issues, but has below average service for the few issues that arise, will receive a poor customer service ranking.

   ii. The validity and reliability of the proposed metrics is questionable as, rather than being an objective measure of customer service quality, the metrics will favour providers who solve simple problems rather than avoiding them, who have basic products that do not give rise to complex customer service issues, whose customers have low service expectations or are better able to deal with automated customer assistance. This is illustrated by Skinny's customers being more satisfied than Spark's customers even though the customers are on the same physical network and customer support is provided by a shared contact centre with the same service standards. It is also doubtful that customer service from a provider bundling telecommunications and electricity can be directly compared to customer service from a pure telecommunications provider. In particular, because telecommunications and electricity lead to different customer service issues.

c. **The proposed intervention may lead to perverse incentives and therefore inefficiencies.** As discussed in section 7:

   i. The consumer dashboard may have a crowding out effect where it becomes a focal point at the expense of price/product comparisons. This could have the effect of lessening competition on other dimensions that are otherwise important to consumer preferences

   ii. Providers are likely to invest in initiatives that improve their rankings on the metrics used for the dashboard—how quickly problems are resolved and how knowledgeable/helpful staff were—ahead of non-measured customer service dimensions. This is likely to lead to outcomes which move away from, rather than towards, customer preferences.

   iii. Providers are likely to divert investment from avoiding issues to quickly solving them when they arise as this will improve their rankings.

   iv. The existence of a prominent customer service dashboard may cause an inefficient overinvestment in customer service.

   v. Providers may be incentivised to avoid (or to shed) potentially difficult customers to preserve their rankings.

   vi. The boundary between providers that are in/out of the league table may create distortions. It is also unclear how the NZCC will treat providers with multiple brands.

   vii. Providers may be incentivised towards more basic products with fewer features.

d. **Alternative solutions may better promote the statutory purpose.** Section 8 discusses alternative interventions which would be in proportion to the evidence and largely avoid the potential distortions from the compulsory consumer dashboard approach. In contrast, the purpose of the current intervention appears to be paternalistic rather than responding to a market failure. Further, by going straight to a proposed solution of a consumer dashboard, the Commission would overstep its intended backstop role by not giving industry self-regulation the chance to address any identified concerns.

2. Background on the NZCC's proposed customer service intervention

2.1. Customer service is one dimension of retail service quality

5. The NZCC is currently undergoing a work programme with the aim of improving retail service quality (**"RSQ"**) that is provided by service providers. As part of this work program, the NZCC has proposed interventions to improve customer service, which is one of the "key matters" of RSQ (the others being billing, product disclosure, switching process, contract issues, and debt practices).[3] In this regard, the NZCC defines customer service as:[4]

> *"Assistance and guidance a provider delivers to consumers **after** they buy a product or service. Customer service could be provided via a call centre, email, web chat, in-person at a retail store, social media or messaging." [**emphasis added**]*

6. In other words, customer service encompasses all of the service interactions that occur between a customer and their service provider ***after*** the purchase is complete. The NZCC additionally provides the following specific examples of poor customer service:[5]

   a. long wait times and multiple transfers;

   b. poor record keeping of previous interactions;

   c. It is difficult to understand customer service representatives;

   d. It is difficult to resolve issues; and

   e. Consumers lack information about the installation process.

2.2. The NZCC believes the provision of customer service is inefficiently low

7. Regarding customer service, the NZCC states that there is *"a gap between industry performance and consumer expectations and ongoing consumer complaints in relation to customer service"*.[6]

8. For this to be a problem, the NZCC is implicitly taking a position that the provision of customer service is inefficiently low. That is, the benefit of improved customer service would exceed the costs to improving customer service (e.g., by improving training or investing in new digital services) but the market is failing to deliver this higher level of customer service.

9. In describing the driver of inefficiently low provision of customer service, the NZCC notes that there are two related factors.

10. First, when making a purchase, there is a behavioural issue because customers tend to place little value on customer service considerations:[7]

> *"Customer service is not front-of-mind for most consumers when choosing a telecommunications service provider. Consumers tend to focus on product and price when considering different providers."*

---

[3] NZCC, *Improving Retail Service Quality Final Baseline Report*, December 2021. p.10

[4] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para 6, p. 11.

[5] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para 7.1-7.5, p. 11.

[6] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para X.3, p. 5.

[7] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para X2.1, p. 5.

11. The behavioural research relied on by the NZCC frames this as arising from a combination of availability bias ("moments of customer service need were rare, thus not often considered") and optimism bias ("considering customer service is at odds with the mindset in the switching moment for most, it asks switchers to envisage signing up to a service that may not deliver to expectations").[8]

12. Second, there is an information issue because of "the absence of suitable performance-related information showing how different providers compare in terms of customer service."[9] Rather, customers only learn about the customer service of their chosen provider when a problem arises:[10]

> *"Customer service levels do not become apparent until something happens after purchase and consumers need help from their provider. At this point, consumers experience their chosen provider's level of customer service. Many consumers find that this experience fails to meet their expectations. These consumers may have selected a different provider if they had known the level of customer service they would receive."*

13. Broadly, the NZCC's theory that current market outcomes do not match true customer preferences is based on an underweighting of the issue of customer service (the "behavioural" issue) and a lack of information about customer service (the "information asymmetry" issue). If correct, the result could be that, at the margin, RSPs are underinvesting in customer service because doing so would provide no marginal competitive advantage, despite consumers having an *ex ante* willingness to pay for a higher level of customer services if the optimism bias was counteracted and full information was available.

2.3. The proposed "league table" intervention

14. To address the stated problem of inefficiently low provision of customer service, the NZCC has proposed an intervention to increase transparency of customer service. The objective is to better inform consumers, which should then cause service providers to provide customer service that better matches consumer demands. As a result, increased transparency would push competition to increase the provision of customer service.

2.3.1. League table concept is based on a similar UK intervention

15. The NZCC intervention is largely modelled using a UK Competition and Markets Authority (CMA) intervention as a template:[11]

> *"To inform our approach, we have drawn on the Competition and Markets Authority (CMA)'s experience in the UK banking sector. The CMA uses a dashboard showing quality of service rankings to drive competition and improvement in retail service quality."*

16. By way of background, the CMA reviewed retail banking to assess if competition is working.[12] At the outset, the CMA set out three broad areas in which it had concerns that retail banking may not be working well for customers. One of the broad areas specifically considered competition on service quality:

[8] fiftyfive5, *Telecommunications RSQ Initiative Development*, Oct 2022 slide 12. Note that no particular evidence is offered for these findings.

[9] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para X2.1, p. 5.

[10] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para X.2.2, p. 5.

[11] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para X.13, p. 7.

[12] Competition and Markets Authority, *Retail banking market investigation*, August 2016

> *"whether there is a weak customer response due to lack of engagement, and/or whether barriers to searching and switching are reducing incentives for banks to innovate or to compete on price or* ***quality****" [****emphasis added****]*

17. The intervention requires banks to prominently display a "league table" of four customer service metrics at the point of sale (website, app, in branch). The metrics are scores of "how likely a customer would recommend a banks service to friends and family" for (a) overall service quality, (b) online and mobile banking services, (c) overdraft services, and (d) services in branches. Figure 1 shows an example for two of the metrics. Data is collected via a twice yearly nationally representative survey by an independent firm.

18. As we elaborate on later in this report (section 5.3) these metrics are different from NZCC's proposed metrics, in the sense of being much more general and focusing general satisfaction, rather than specific aspects of customer service.

Figure 1: Example of CMA's league table for UK Banking

Source: IPSOS, Independent service quality survey results, February 2022, see: https://www.ipsos.com/en-uk/personal-banking-service-quality-great-britain-february-2022

2.3.2. NZCC's proposed intervention

19. The NZCC's proposed intervention consists of the following prongs:
    a. **Monitoring:** Collect various data spanning:
        i. *Industry information* e.g., average wait time;
        ii. *Customer survey results* e.g., "How helpful and knowledgeable staff were regarding the customers issue"; and
        iii. *Disputes resolution* e.g., number of complaints.
    b. **Reporting**: Use the collected data to publish a report that uses the full set of collected customer service data (and additional non-customer service RSQ data). Figure 2 provides an example of how the NZCC is thinking of reporting its customer service data;
    c. **Scoring:** providers would be scored using the following two aspects of customer service deemed most important by the NZCC's behavioural research:[13]
        i. *Speed of resolution* – how quickly customer issues are resolved by providers, and
        ii. *Staff helpfulness and knowledge* – how helpful and knowledgeable staff are in dealing with customer issues.
    d. **Publish:** Informed by precedence set by the Competition and Markets Authority in the UK banking sector, the NZCC would require service providers to prominently display a "league table" at the point of sale (both online and instore) as well as on the NZCC website. This table would report ranking of the two scores set out above. Figure 3 provides an example of how the NZCC is thinking of reporting a league table based on the scoring of the two customer service metrics set out above.
20. The most substantive part of the intervention are the final two prongs of scoring and publish. NZCC. This is because on some level the NZCC will be taking a view on what constitutes "good" customer service and then prominently endorsing that view at the point of sale. Therefore, the NZCC will likely be directly influencing how consumers select providers.

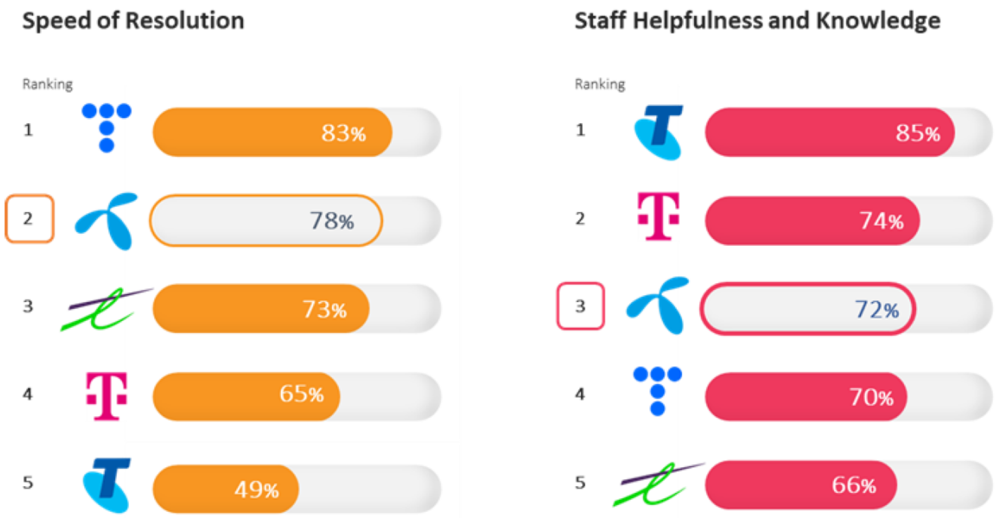
[13] fiftyfive5, *Telecommunications RSQ Initiative Development,* Oct 2022 slide 30.

Figure 2: Example of the NZCC’s proposed reporting of customer service

Satisfaction with service Overall		86%	82%	75%	68%	57%
Satisfaction with speed of resolution		83%	78%	73%	65%	49%
First time Resolution		60%	55%	56%	54%	58%
Time taken to Resolve (mm:ss)		15:52	22:34	16:32	25:24	33:45
Knowledge and helpfulness of staff		85%	74%	72%	70%	66%
Ownership of issues		75%	64%	82%	60%	76%
Satisfaction with broadband installation		82%	75%	78%	71%	68%
Satisfaction with record keeping		65%	54%	52%	60%	63%
Satisfaction with number of transfers		71%	63%	71%	65%	56%
Complaints per 10000 subscribers		1.52	1.67	1.10	2.47	2.31
Call Centre	Average Wait Time (mm:ss)	0:55	2:25	1:39	1:50	2:15
	Abandonment Rate	10%	9%	7%	8%	11%
	Average Handling Time (mm:ss)	10:52	11:34	9:32	15:24	13:45
Chat	Average Wait Time (mm:ss)	0:15	0:12	0:32	0:45	0:23
	Abandonment Rate	9%	7%	10%	11%	8%
	Average Handling Time (mm:ss)	11:34	9:32	15:24	13:45	10:52

Source: NZCC, Improving Retail Service Quality: Customer Service, December 2022, Figure 2, p. 9.

Figure 3: Example of the NZCC’s proposed scoring and publishing of two customer service metrics



NOTE: This table shows where we rank in an independent customer satisfaction survey. This survey measures satisfaction in two key areas: (1) how quickly issues are resolved; and (2) how helpful and knowledgeable staff are in dealing with issues.

The survey is run by the Commerce Commission every month across approximately 600 customers who have experienced service issues in the previous 6 months. The rankings are updated every six months and represent the views of consumers who took part in the survey over the previous six-month period. This table sets out rankings in the period to March 2023.

Source: NZCC, Improving Retail Service Quality: Customer Service, December 2022, Figure 9, p. 24.

3. Legal framework

21. The Telecommunications (New Regulatory Framework) Amendment Act 2018 introduced new functions and powers for the NZCC in relation to RSQ. Of relevance here:

    a. Section 9A of the Act outlines the NZCC's functions in respect of the telecommunications sector. In respect of RSQ, the Act states the NZCC must "monitor retail service quality in relation to telecommunications services" and "make available reports, summaries, and information about retail service quality in a way that informs consumer choice".[14]

    b. Section 10A provides the NZCC with information gathering powers, stating that for the purpose of carrying out the two RSQ-related functions quoted above, the NZCC can require any telecommunications service provider to "prepare and produce forecasts, forward plans, historical information, or other information", and apply any methodology or format specified by the NZCC in the preparation of those forecasts or other information.[15]

    c. Part 7 of the Act outlines the NZCC's role in consumer affairs matters in the telecommunications market, specifically covering RSQ codes and dispute resolution schemes. The NZCC is empowered to issue guidelines on RSQ codes (including as to what matters are appropriately dealt with),[16] and to review industry RSQ codes made by the Telecommunications Industry Forum.[17] The overall purpose of an RSQ code is "to improve retail service quality to reflect the demands of end-users of telecommunications services".[18] If there is no industry RSQ code or, after a review, the NZCC takes the view either that the code fails to achieve that purpose or that purpose would be better achieved by an RSQ code made by the NZCC, then the NZCC is empowered to make an RSQ code in the form of secondary legislation.[19] A NZCC-made RSQ code must promote the overall purpose of RSQ codes generally, and specify the providers and services to which it applies.[20]

22. The Act envisages that the NZCC will take a staged approach to RSQ interventions consisting of:

    a. information gathering under s 9A;

    b. the issuing of guidelines on RSQ codes where there is evidence that current service quality does not reflect the demands of end-users;

    c. the setting or amendment of industry RSQ codes in light of such guidelines;

    d. review by the NZCC of industry RSQ codes; and

    e. ultimately, the making of a RSQ code by the NZCC where the industry has failed to establish a satisfactory of industry RSQ code.

23. The idea of a path of escalating measures is consistent with the Regulatory Impact Statement:[21]

    > *"This power [to make an NZCC RSQ code] would be used as a backstop measure and an additional lever in the Act to incentivise improvements from industry. The option would give industry the*

---

[14] Telecommunications Act 2001, s 9A(1)(e) and (f).

[15] Section 10A.

[16] Section 234.

[17] Sections 235 and 5, definition of "industry retail service quality code".

[18] Section 233.

[19] Section 236.

[20] Section 237.

[21] Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Telecommunications Act Review – Consumer Matters* (March 2017) at [98]. See also [76], [83], [126(b)] and 139.

opportunity to continue to improve the customer experience in the first instance and to develop a code, prior to implementation of the code making power and would therefore ensure a proportionate response."

24. In referring to what is now s 236, the associated Cabinet Paper, the Explanatory Note to the Bill, and the Minister's speech in the first reading all explain that the NZCC's power to make an RSQ code applies if industry self-regulation is inadequate.[22]

25. In exercising these powers, the NZCC is subject to various administrative law requirements. Of particular relevance here:[23]

    a. A public body must have legal authority for its actions and it must act within the scope of that authority. Decision-makers are required to understand and apply the correct legal test for their decision – if a decision-maker has misinterpreted what it is required to do it will have committed an error of law.

    b. Powers must be exercised within the objects and purpose of the statute.

    c. Where a statute gives a public body discretionary power, that power must be used to further the scope and object of the statute – not for an extraneous purpose: "Parliament must have intended that a broadly framed discretion should always be exercised to promote the policy and objects of the Act".[24]

    d. Public bodies must take into account all legally relevant considerations and avoid taking into account those that are irrelevant.

    e. A public body's decision is unlawful if it is "unreasonable" or "irrational". This may involve: giving manifestly inappropriate weight to a factor; being illogical, arbitrary, inconsistent or uncertain; giving inadequate or incomprehensible reasons; or making a decision based on inadequate or mistaken facts. A decision-maker will also make an error of law if it correctly interprets its task but applies it in way that is in error or is untenable on the facts.[25]

    f. A decision-maker must make its findings on the basis of material of probative value, in the sense that there is some material which "tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding … is not logically self-contradictory." [26] Similarly, the reasoning must be supportable as a matter of logic, on the basis of the material taken into account by the decision-maker in reaching its decision.[27]

    g. A public body's decision may be unlawful if it is disproportionate. One test of proportionality is to assess whether the action produces a legitimate aim recognised by the law, whether the action is capable of achieving that aim, and whether there is a less restrictive alternative that could have been employed. Proportionality can also engage when a decision-maker manifestly fails to attain a fair balance of (relevant) considerations, or where the impact of the decision is unduly oppressive.

[22] Cabinet Economic Growth and Infrastructure Committee Cabinet Paper "Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection" (May 2017) at [83]; Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293–1) (explanatory note) at 6 and 16; and (16 August 2017) 724 NZPD 20335.

[23] The list is based on Lord Woolf and others (eds) *De Smith's Judicial Review* (7th ed, Sweet and Maxwell, London, 2013) at [1–001].

[24] *Unison Networks Ltd v Commerce Commission* [2007] NZSC 74, [2008] 1 NZLR 42 at [50]-[55].

[25] *Vodafone v Commerce Commission* [2011] NZSC 138 at [52].

[26] *Re Erebus Royal Commission; Air New Zealand Ltd v Mahon* [1983] NZLR 662 (PC) at 671 per Lord Diplock.

[27] *Vodafone New Zealand Ltd v Telecom New Zealand Ltd* [2011] NZSC 138, [2012] 3 NZLR 153 at [52].

26. Guidance as to when a decision risks being reviewable can also be taken from the widely-recognised principles of good regulatory practice, including that regulatory interventions should be: [28]

    a. based on evidence of a market failure;

    b. evaluated on the basis of a cost-benefit assessment; and

    c. proportionate to the problem identified and designed to have the least adverse impact on market competition

[28] See, for example, OECD Regulatory Policy Committee *Recommendation of the Council on Regulatory Policy and Governance* (OECD Publishing, Paris, 2012); *Government Expectations for Good Regulatory Practice* (New Zealand Government, April 2017); "Best practice regulation" (21 April 2017) The Treasury, available at https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/keeping-regulation-fit-purpose/best-practice-regulation; and *What regulatory system governance is and why it's important: principles and guidance* (Ministry of Business, Innovation and Employment, August 2021).

4. NZCC has not demonstrated there exists a market failure warranting intervention

27. This section assesses whether the NZCC has demonstrated there is a market failure warranting intervention by:

    a. Outlining how the current provision of customer service may be consistent with a competitive market (section 4.1);

    b. Setting out that the NZCC has not credibly demonstrated a market failure meaning that the NZCC has not ruled out the possibility that the current provision of customer service is the result of a competitive market (section 4.2); and

    c. Explaining that the NZCC has not conducted a cost benefit analysis (section 4.3).

4.1. Current provision of customer service may be consistent with a competitive market

28. At the heart of the NZCC's consultation paper is a presumption that there is a market failure meaning that the market is providing an inefficiently low level of customer service. Specifically, the NZCC suggests that consumers erroneously place too little weight on customer service when initially choosing a provider and lack of accurate information on the different levels of customer service associated with different providers.

29. While it is not substantiated that customer service levels are actually "low" (in particular, as we discuss elsewhere in this report, avoidance of problems is not considered in the NZCC's analysis), assuming this is the case, an alternative explanation for this is that the current provision of customer service may be consistent with a workably competitive market. In particular, "low provision" of customer service (as deemed by the NZCC) would arise in a competitive market if:

    a. Consumers place a relatively low value on customer service e.g., because other considerations such as price and product fit are genuinely much more important. Additionally, the probability of requiring customer service is relatively low; and/or

    b. The marginal cost of improving customer service further is high e.g., because it is costly to improve staff training or the types of problems that led to customer service complaints are inherently difficult to solve.

30. In fact, it is often the case that competition causes firms to lower quality in order to lower prices. For example, competition between airlines has famously seen ticket prices trend steadily downwards as firms cut back on costs by providing a lower quality service (as this is preferred by consumers).

31. The NZCC has also not compared customer service levels to other markets in order to benchmark whether customer service levels are particularly low.

32. In order for a market failure in customer service to exist, providers must be able to "get away with" a lower level of customer service than customer preferences would dictate. Conversely, if customer's can respond to what they perceive as poor quality service, then provider's will have a strong market signal to respond with a level of customer service that best balances cost and quality.

33. In this sense, the NZCC's problem definition requires that customers are locked-in to a relationship with their telecommunications service provider, to the extent that providers can deliver inefficiently low customer service without repercussions. This would only be the case if customer's faced high switching costs when service quality becomes salient (that is, when a

problem arises). However, to the contrary, the data shows that mobile and broadband customers regularly switch providers. For instance, the NZCC's data shows that customer churn is 48% for prepay mobile, 9% for on-account mobile, and 19% for broadband (see Figure 4). These switching rates suggests there is material switching between providers. Further, to the extent that the change in provider has been prompted by a poor customer service experience, there is no reason to think that they would not consider the expected level of customer service at the provider they are switching too.

34. In other words, rather the evidence is that customer's do not face high switching costs and frequently change providers. Accordingly, the risk that low investment in customer service will result in a bad customer experience which causes a customer to switch to a different provider will incentivise providers to offer customer service at a level which reflects consumer preferences.

4.2. NZCC has not credibly demonstrated a market failure

35. As set out above, understanding whether there is a problem to solve requires understanding whether the observed levels of customer service reflect the efficient outcome of workably competitive markets are or are the result of a market failure caused by a combination of consumer inattention and a lack of useful information.

36. The NZCC has not credibly demonstrated a market failure as it has not provided evidence to rule out the possibility that current service levels are consistent with workably competitive markets. Instead, the NZCC has presumed the existence of a market failure and supported this claim with observational points. For instance, as evidence that consumers are uninformed, the NZCC notes that when considering different providers *"Customer service is not front-of-mind for most consumers"* and *"Consumers tend to focus on product and price"*. These points, however, are equally consistent with consumers rationally placing much more weight on price and product fit than customer service.

37. For additional evidence, the NZCC notes that *"Customer service levels do not become apparent until something happens"* such that *"These consumers may have selected a different provider if they had known the level of customer service they would receive."* Again, this observation is also consistent with a competitive market. This is because, *ex-ante*, it may be rational to place low value on customer service when choosing a provider if the probability of having a bad customer service experience is sufficiently low. Then while most customers don't need to interact with customer service, some proportion will have an interaction, and some proportion of these customers will have a bad experience. While this sub-group of customers, *ex-post*, would have preferred to have selected a provider with better customer service; comparing the *ex-post* outcome to the *ex-ante* outcome is not generally informative.

38. The NZCC's approach to problem identification at [9]-[12] is based on intuition and is conclusionary, rather than being evidence-based. For instance, the NZCC has not undertaken a systematic analysis of several relevant information sources such as the Telecommunications Disputes Tribunal's databases,[29] the NZCC's own complaints database; or asked providers for their complaints records. Nor does the behavioural research commissioned from Fiftyfive5 provide any basis for thinking there is a market failure. The relevant slides of the Fiftyfive5 report[30] (12 to 15) suggest no more than:

    a. A majority of customers had not had issues requiring customer service. For example, Table 1 shows that over 80% of mobile customers and 70% of broadband customers do not encounter a single issue in a given year.

[29] "Publications A compilation of annual and biannual reports from TDR", Telecommunications Disputes Tribunal, accessed March 16, 2023, https://www.tdr.org.nz/resources/publications.

[30] fiftyfive5, *Telecommunications RSQ Initiative Development,* Oct 2022 slides 12-15.

b. Customer service is outweighed by price and product consideration at the time of purchase.

c. There is a pervasive belief that business is becoming less customer and service centric.

d. When problems arise with customer service, common frustrations include: wait times; automation; and lack of ownership. Less commonly customers experience: poor notes; passing off; and repeated issues.

e. Few sources of recommendation exist as to customer service quality.

39. Leaving aside that it is unclear what specific evidence these propositions are based on, the survey methodology is not well suited to assessing whether customer service reflects customer preferences.

40. First, there is an issue of hindsight bias. After the fact people who have customer service issues may decide that they would have preferred an offering with better customer service. But, while 100% of people who experience a product problem after the warranty period has ended may have preferred to purchase an extended warranty, this does not mean that extended warranties are a good idea for all consumers or that these particular consumers would choose an extended warranty ex ante.

41. Secondly, the consumers being surveyed may provide an opportunistic response which would not reflect their actual purchasing decisions. For example, the survey may provide a means to vent about a difficult experience. The customers are also not being asked to make any sort of trade-off between greater customer service and the price of that service.

42. Another way of putting it is that neither the NZCC nor Fiftyfive5 have asked any questions which would have allowed them to conclude that even though some customers who require customer service are disappointed with the level of service they experience, there is no problem that requires solving. To test whether a problem exists, the NZCC should have looked at switching behaviour and willingness to pay for different levels of customer service.

43. A related issue is that, if the proposed consumer dashboard was introduced, there does not seem to be any way to tell whether it was working. That is, how could it be tested whether customer service was now front of mind to the right extent (not too much, not too little) and that consumers now had access to reliable and sufficient information on the customer service that they were likely to experience? This is contrary to good regulatory practice which is to specify the outcomes sought in a regulatory intervention so that its effectiveness and impact can be tracked.[31]

44. A final point is that any intervention should be consider in the context of the NZCC's other recent retail service quality interventions. For example, the NZCC intervened from 2019 to require MNOs to increase the information provided to customers about their spend and usage in relation to post-paid mobile plans. This intervention was motivated by NZCC's belief that consumers were not sufficiently engaged with whether their current plan aligned with their actual needs, and that consumers would more actively consider switching to different plans if given more information. We note that this problem is very similar to the problem that the CMA was addressing (see Section 5). In this sense, the NZCC has already implemented a remedy to address the problem the CMA was addressing. Given the NZCC is now ostensibly solving a different problem to that which the CMA was addressing, this questions the appropriateness of appealing to the CMA's intervention as precedent.

[31] Ministry of Business, Innovation and Employment, *What regulatory system governance is and why it's important: principles and guidance*. August 2021 at 14–15.

4.3. The NZCC has not conducted a Cost Benefit Analysis

45. A cost-benefit analysis is a systematic process of evaluating the costs and benefits of a proposed regulation to society as a whole. It is an important tool for regulators to use to ensure that their decisions are based on a comprehensive understanding of the potential impacts of their actions. By carrying out a cost-benefit analysis, a regulatory agency communicate the reasoning behind its decisions to stakeholders. This does not need to be a quantitative exercise, rather quantifying benefits of costs where possible adds rigour to the exercise and informs decision makers about the required magnitude of the costs and benefits that are not easily quantifiable to action beneficial or not.

46. The NZCC has not undertaken this exercise and therefore has not demonstrated that the proposed intervention will result in net benefits (in effect will result in a net improvement compared to the status quo) or that an alternative intervention might be a more proportionate response (i.e. considered whether other interventions that would achieve similar benefits at lower cost).

47. In particular, on the benefits side, this would require an assessment of how much customer service might improve and the value of that improvement. Value in this context involves a consideration of both the per customer benefit of increased customer service and also the number of customers impacted. Regarding the latter question, the NZCC has not engaged with the materially of the potential benefits, even if they are correct that the current provision of customer service is inefficiently low.

48. In this regard we note that the fiftyfive work found that there was a *"rare need for customer service"* and the *"majority we spoke with hadn't had significant issues requiring customer service"*.[32] If customers rarely need customer service, this suggests that the benefits of improving customer service may be small. Further evidence on this point comes from the Consumer Telecommunications Survey prepared for the NZCC by Research NZ.[33] This survey found that the majority of mobile and internet customers do not have issues with their provider in a given year and if they do, customer service problems are typically of much lower significance than more technical concerns e.g., around service performance. This is shown in Table 1 below, which focuses on the extent to which customers experienced a broad service issue, what proportion of customers experienced customer service issue and what proportion of customers reported customer service being the biggest issue they experienced.

Table 1: Prevalence of customer service issues per year

	Internet* (%)	Mobile* (%)
Experience an issue	28%	19%
Customer service issue	7%	5%
Customer service *biggest* issue	9%	13%

*The data in this table is reported as a yearly rate for ease of interpretation. We adjust the original data that was reported per two years by dividing by two and rounding up. A customer can report multiple issues.
Source: Table 2 on p. 10 from Research New Zealand, *Consumer Telecommunications Survey (prepared for the NZCC)*, July 2021

49. Finally, a higher level of customer service will be associated with higher costs and therefore higher prices in the competitive retail mobile and broadband markets. Even if consumers are

[32] fiftyfive5, *Telecommunications RSQ Initiative Development,* Oct 2022 slides 12.

[33] Research New Zealand, *Consumer Telecommunications Survey (prepared for the NZCC),* July 2021

currently getting less than the theoretical optimal level of customer service, this is partially offset by paying lower prices. Accordingly, any net detriment to consumers may be very small.

50. The NZCC has also not engaged with the costs of the proposed intervention. In addition to direct implementation costs, there are also potential distortions to efficient behaviour. We elaborate on the latter issue in section 7 below.

5. Applicability of UK banking precedent doubtful

5.1. Context behind CMA quality scores

51. The NZCC's consultation paper notes that its approach draws on the regulatory experience of the CMA, which has introduced a dashboard showing quality of service rankings in respect of the UK retail banking industry.[34] Accordingly, this part briefly outlines the context and market conditions behind the CMA's adoption of a quality of service rankings dashboard.

52. Starting from 15 August 2018, the CMA has required retail banks to prominently display information on service quality sourced from a rolling six-monthly survey of personal and small business customers on how likely they would be to recommend their bank (and its online, mobile banking, branch, and overdraft services). These survey results are displayed in bank branches, and prominently on banks' websites and apps, with the rules applying to British banks with more than 150,000 personal current accounts or 20,000 business current accounts.[35] This measure was taken in tandem with new regulations put in place by the Financial Conduct Authority that required banks to release information on the speed, availability, and quality of certain current account services.[36]

53. The relevant legislative instrument is part 3 of the Retail Banking Market Investigation Order 2017, first published on 2 February 2017. This followed from the remedies implementation phase of the CMA's work following its investigation into the retail banking market, the final report of which was published in August 2016 (Final Report).

5.2. CMA was addressing a different problem and provided evidence for its theory of harm

54. The Final Report identified significantly low customer engagement in the personal current account (PCA) market as a significant issue. The relevant findings included that:

    a. 90% of customers on a standard or reward account would gain financially from switching products, often with substantial financial gain,[37] but despite this market shares remained broadly static.[38]

    b. Customer engagement in the PCA market was limited: a majority of respondents had been with their main PCA provided for over a decade, and only 8% of customers had switched PCAs to a different bank over the past three years (compared to 13% in savings products and over 30% in energy).[39]

    c. Drivers of low customer engagement included barriers to accessing information on PCA charges and service quality, owing to the complexity of and lack of transparency in banks'

[34] NZCC, *Improving Retail Service Quality: Customer Service Consultation Paper*, December 2022, para 44–46, p. 20.

[35] "Banks scored on quality of service", Competition and Markets Authority, accessed February 17, 2023, https://www.gov.uk/government/news/banks-scored-on-quality-of-service.

[36] Financial Conduct Authority, *Banking (Information About Current Account Services) (Amendment) Instrument 2018*, 2018.

[37] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 57, p. xi.

[38] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 64, p. xii.

[39] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 57, p. xii- xiii.

pricing structures (particularly as regards overdraft users) and the need to collate multiple information inputs.[40]

d. A similar lack of engagement was present in relation to SMEs and market shares were stable despite significant variation in price and quality between banks.[41]

55. Against this backdrop, the CMA proposed a suite of remedies designed to "empower personal and business customers to make good choices when considering banking arrangements", including encouraging customers to shop around and to consider switching, and incentivising banks to compete for custom, through the provision of open data in banking.[42]

56. Importantly, this context can be contrasted with the Commission's process to date:

a. The extent of low customer engagement in the PCA and BCA markets had been thoroughly canvassed by the CMA through collecting information, and establishing comparisons with switching rates in other markets.

b. The analysis that led the CMA to conclude low customer engagement was a serious issue in the PCA and BCA markets was based on the fact that market shares remained stable despite the widespread prevalence of financial benefit (often significant financial benefits) open to customers in the event they were to switch products. In this regard, the CMA estimates that 90% of customers would gain financially if they were to switch to one of the five cheapest products that were appropriate for the customers' usage. The average gain from switching for these customers would be around £92 per year.[43]

c. A significant part of the CMA's conclusion that its proposed remedies package was proportionate concerned the importance of and flow-on benefits associated with improvements in the banking sector. As its summary final report states:[44]

> *"The markets for PCAs and SME banking services are very important sectors of the economy in their own right – generating combined revenues of over £14 billion in 2014 – and are of vital importance to the wider economy. Making these markets work better, by empowering customers and harnessing technological change, will deliver substantial benefits for small businesses and personal customers."*

57. In contrast:

a. The NZCC's findings are based on intuition and are conclusionary.

b. The observed market outcomes are at least equally consistent with workable competition than with a market failure.

c. The NZCC has made no attempt to assess the costs and benefits of the proposed intervention.

---

[40] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 57, p. xiv - xvi.

[41] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 57, p. xxii.

[42] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 57, p. xlvii - xlviii.

[43] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 57, p. xlvii - xlviii.

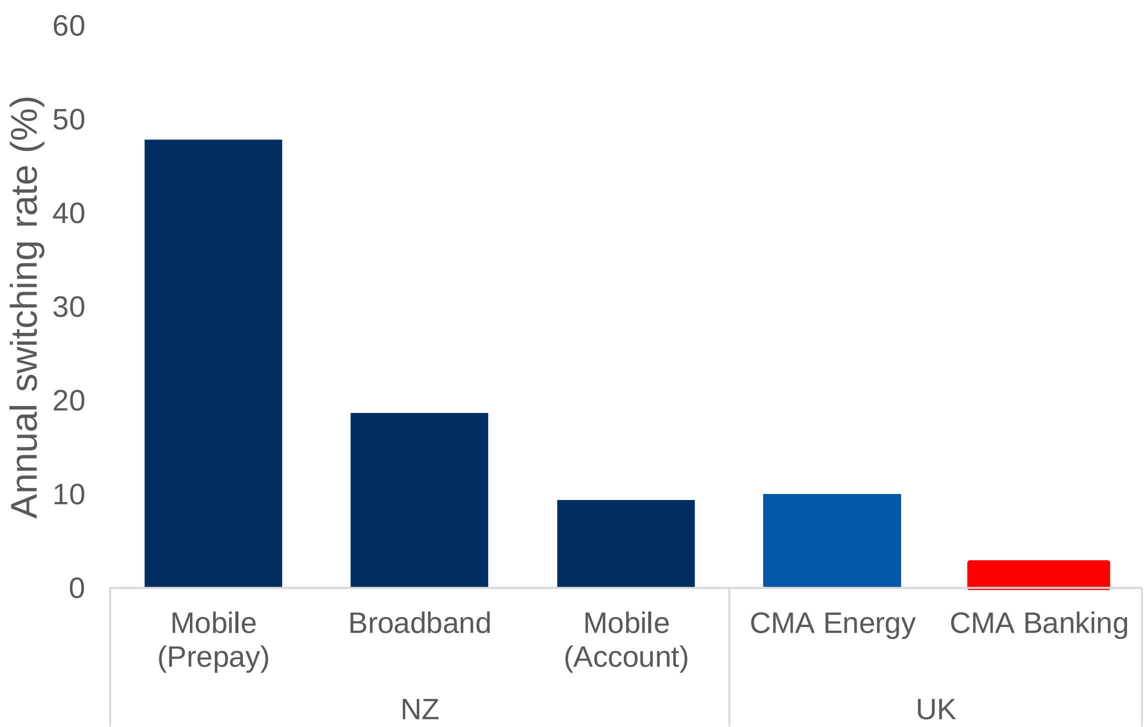
[44] Competition and Markets Authority, *Retail Banking Market Investigation: Final Report*, August 2016, para 57, p. xlviii–xlix.

d. The NZCC has already recently made an intervention that addresses the problem that the CMA was concerned with (see paragraph 44 above).

58. Furthermore, analysis of NZCC churn data suggests that switching rates in the NZ telecommunications markets are materially higher than those which led the CMA to conclude there was a problem in the UK banking market, as shown by Figure 4 below. More specifically, the switching rate for prepay mobile (48%), broadband (19%), and on-account mobile (9%) was much greater than UK banking (3%) and similar or greater to energy in the UK, which the CMA considered a good comparison for the UK. Noting that for on-account mobile – which has the lowest switching rate – the rate increases to 37% when considering consumers that switch to prepay or another plan within the same provider (as compared to 5.5% for UK banking).

59. The contrast of a notably higher switching rate in NZ mobile and broadband compared to the UK suggests that consumers are sufficiently engaged at present to incentivise providers to provide good customer service in line with ordinary market mechanisms.

Figure 4: Switching rates for NZ mobile and broadband compared to the CMA's evidence base of UK banking and energy



Source – NZCC 2021 Annual Telecommunications Monitoring Report 17 March 2022. Switching rate is churn divided by total number of subscribers. CMA Energy and Banking are from the CMA's Retail Banking Market Investigation: Final Report, August 2016.

5.3. CMA's intervention focused on outcomes rather than outputs

60. As already mentioned in section 2.3.1 above, the CMA intervention focused on broader measures of customer satisfaction, which is subtly, but importantly different from the NZCC's approach which singles out two aspects of customer service. We discuss potential issues with focusing on to specific aspects of customer service in the following sections, but note at this point that

focusing on aspects of customer service is contrary to where regulatory best practice has been headed in the last decade.

61. While retail telecommunications markets are not monopolistic markets, it is useful to draw analogies with trends in how quality is regulated for monopoly infrastructure assets. In this context, the focus is more on incentivising the improvement in customer “outcomes” as opposed to “outputs”. The logic being that if firms are rewarded for making their customers happy, they will be incentivized to innovate and find the most cost effective way to make their customers happy. By contrast, if “outputs” are incentivized (which the NZCC’s customer service metrics are an example of), firms are incentivized to find the most cost effective way of delivering that output, even where there might be more efficient ways of making customers happy. As we discuss in the next section, a key issue in the current context is that it might be efficient for RSPs to invest in systems which avoid problems, but this would not be capture by the NZCC’s output measures.

6. Proposed scores may be a poor proxy for customer service

62. This section sets out how the proposed scoring of customer service based on two survey questions is unlikely to be a good representation of customer service. To make this point, we:

    a. Explain how the scores do not account for providers that avoid customer service problems rather than solve them (section 6.1);

    b. Provide a list of conceptual reasons for why the survey questions might be unreliable metrics for customer service relevant to consumers (section 6.2). This list splits into two broad categories:

       i. First, the metrics may fail to characterise the aspects of customer service that consumers actually value; and

       ii. Second, differences in demographics and expectations across brands can result in customers reporting different levels of satisfaction, even if these brands provide the *exact same* service.

    c. Present empirical evidence to confirm these conceptual arguments hold in survey data commissioned by the NZCC (section 6.3).

6.1. Providers penalised for *avoiding* problems and rewarded for *solving* problems (that were not avoided)

63. The NZCC has focused on a specific part of customer service, which deviates from what customers actually care about. In particular, the NZCC is focusing on the customer service *delivered* or *experienced,* so is treating customer service separately from the other aspects of RSQ such as billing, contracts, product disclosures, and so forth.

64. This narrow focus by the NZCC undervalues a crucial component of customer satisfaction – issue avoidance. Considering customer service in the broadest sense, in reality a customer cares about the entire bundle of RSQ, such that the best customer service is that the customer does not require customer service interactions at all. This stands in contrast with the proposed NZCC scores which place an emphasis on how well providers solve problems rather than how well they avoid problems in the first place e.g., through good initial communication and an informative website.

65. In this regard, when considering customer service in the broad sense, a useful framework is to treat customer service as consisting of two interrelated stages:

    a. **Avoiding problems**: meaning that the provider enacts processes that avoid the need for customers to unnecessarily interact with customer service. At the time of purchase, this might include matching customers with the correct product and providing extensive information at the time of purchase. Following the purchase, providers may support consumers though an website or app that enables customers to access information about services and/or make service changes on a "self service" basis without a service interaction; and

    b. **Solving problem (that were not avoided)**: meaning that the customer encounters a problem and needed to contact customer service for a resolution.

66. By way of summary, a service provider that invests heavily in avoiding issues, but has below industry average customer service for the fewer problems that do arise will score poorly on the proposed league table. As a result, the provider would receive a low customer service score even though customers may prefer having avoided problems all together. In section 7 we link this to inefficiencies.

6.2. Conceptual reasons that scores based on two survey questions unlikely to characterise customer service

67. The NZCC's proposed scores used for the league tables are based on the following two survey questions of (1) Speed of resolution and (2) Staff helpfulness and knowledge. There are several conceptual reasons these metrics can be unreliable of true differences between service providers. For example, because:

    a. **Metrics reflect outputs, rather than outcomes:** as already discussed in section 5.3 above, the metrics the NZCC have chosen can be characterised as "outputs" rather than focusing on the broad "outcome" of whether customers are happy with the service they receive.

    b. **The score is based on only two metrics**: together only 44% of respondents said that one of these metrics was their most important metric. Possible that providers with better overall performance (or better performance for the metrics most relevant for its own customers) receive worse scores than providers that only score well in these limited metrics;

    c. **Providers that avoid problems are likely to receive a lower score:** as set out above a provider that successfully avoids problems will likely receive a lower score as the remaining problems are likely to be increasingly difficult to solve, so (1) take longer and (2) staff may appear less knowledgeable; and

    d. **The score may favour providers with most basic/less innovative product offerings:** While offering fewer products takes away options for consumers (which is generally bad); it may simplify the customer service interactions and improve a providers score in the league table.

68. The above points imply that the publication of the "league table" will not actually meet the criterion of helping consumers assess information, inasmuch as the publication of survey data may produce misleading results as the relative customer service preferences of a particular telecommunications provider's customer, which may not map to the preferences of the average *prospective* customer. Further, the scores may lead prospective customers to now over-prioritise the adequacy of customer service in choosing a provider to the exclusion of other indicators.

6.3. Survey responses may be unreliable

69. Aside from the conceptual validity of the two scoring metrics, there are several reasons to question the reliability of the survey responses:

    a. **Customer expectations differ by provider**: customers using a discount or cheaper provider might have more tolerance for lower quality customer service (as this is somewhat priced in given the price). As a result, these customers might give higher scores for the same level of quality as customers using a more expensive provider; and

    b. **Customer demographics**: different customers may be more or less concerned about customer service. For example, the Fiftyfive5 research finds that *"Those aged over 55 were significantly more likely to view customer service as important (88%). The least engaged cohort (under 25's), have significantly lower numbers deeming customer service as important..".*[45] We consider it likely that demographics vary widely across brands in the market e.g., an incumbent provider that sells mainly through brick-and-mortar retail stores may have a relatively older customer base compared to a newer provider that sells online only.

    c. **Sample bias:** customer service ratings can only be given by those who experience a problem. Thus, as already noted in section 6.1, providers who invest in avoiding problems rather than

[45] fiftyfive5, *Telecommunications RSQ Initiative Development*, Oct 2022 slide 26.

solving them will score poorly on these metrics despite the fact that they might rank quite highly on a more general "outcome" or satisfaction measure.

70. The first two problems can be demonstrated using the research commissioned by NZCC for its RSQ workstreams. This dataset is a large scale and nationally representative survey (2,126 consumers).[46] Using these data, we show that survey results can report significant different satisfaction for the *exact same* provision of:

    a. **Customer service:** Figure 5 shows that Skinny customers report being significantly more satisfied with their customer service than Spark customers despite receiving service from a shared contact centre with the same service standards (Skinny and Spark share the same back office for customer support). One framing is that adding 2.5% to Skinny's score would improve Skinny's ranking by 2 places to make it the top provider. Equally, however, minus 2.5% from Skinny's score would not change Skinny's ranking, so that Skinny still performs better than Spark.

    There exist several plausible reasons to explain this difference. For example, compared to Spark, Skinny prices are typically lower and we understand it has a "cost conscious" or "deal seeker" demographic. Both reasons might mean that Skinny customers have lower expectations for customer service and are therefore happier with the same quality of customer service compared to Spark customers; and

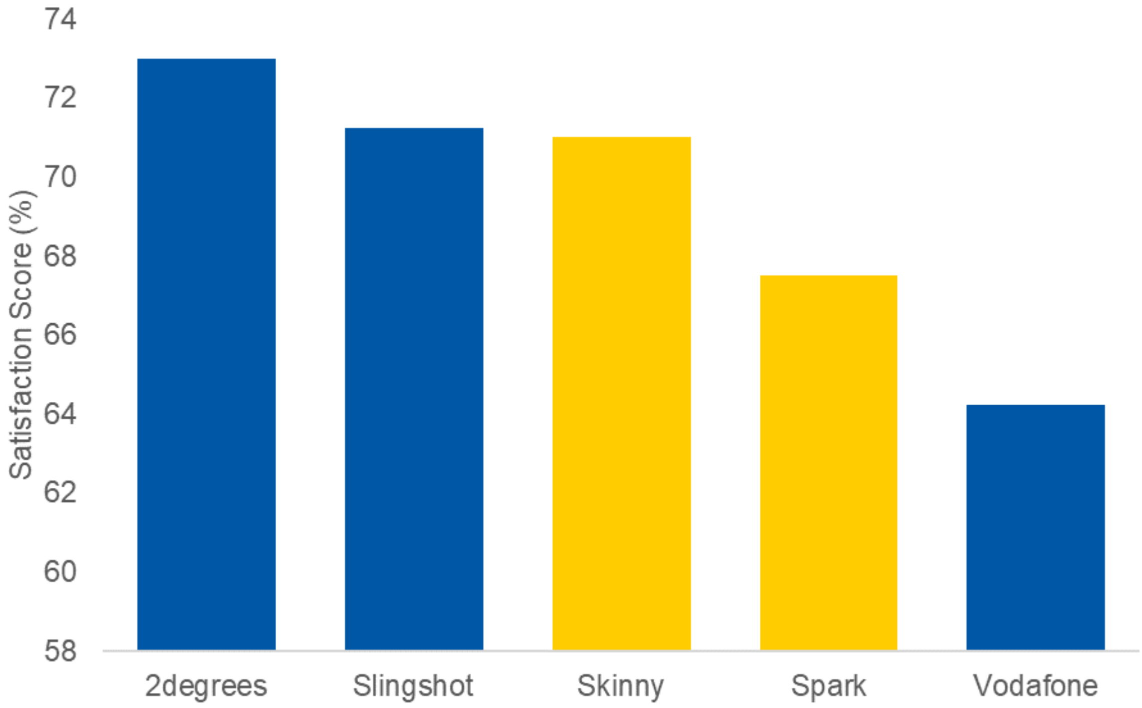
    b. **Coverage and availability:** Figure 6 shows that Skinny, Spark, Orcon, and Trustpower customers report very different levels of satisfaction with coverage and availability (ranging from 75% to 90%). This difference occurs even though all customers are on the exact same network, so receive the exact same coverage.

71. Taken together, these two examples show that the various biases outlined above (e.g., customer expectations and demographics) can translate into material differences in reported customer satisfaction, which skews the scores and rankings.[47]

[46] Research New Zealand, *Consumer Telecommunications Survey,* July 2021, p. 8.

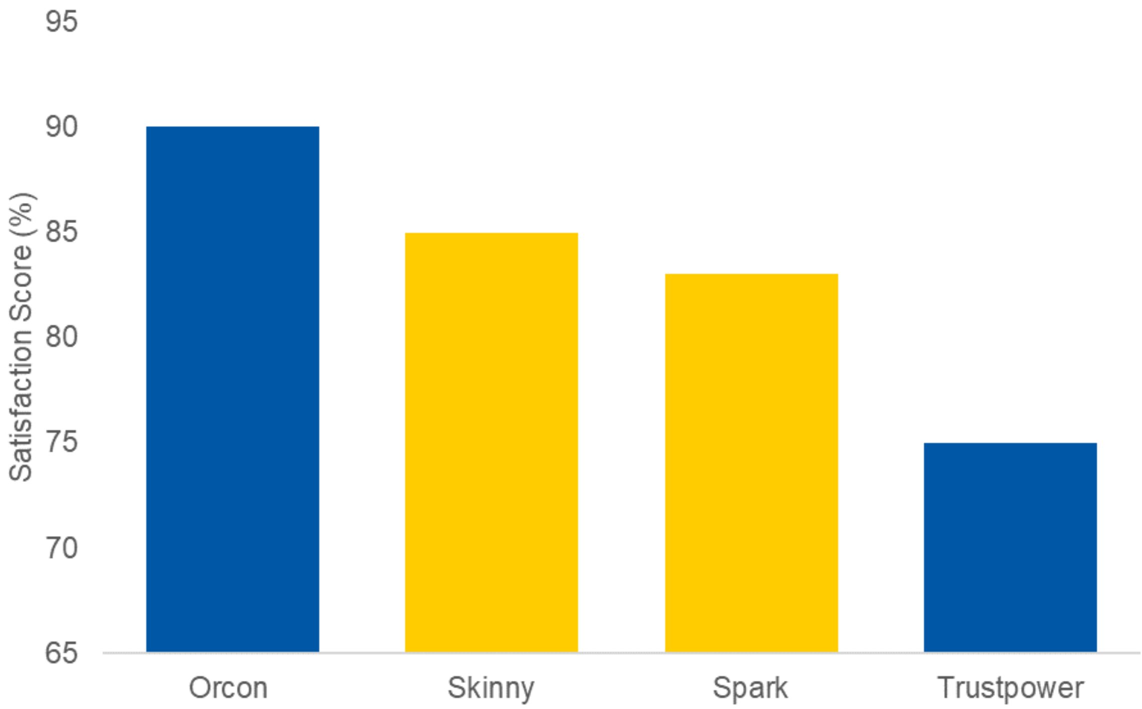
[47] Our focus is on differences caused by bias, but it is also possible for differences to be driven by sampling variation.

Figure 5: Average satisfaction across four customer service metrics



Notes: 5 largest providers. Score averages across 4 customer service metrics (Clarity of communication, Quality of customer service, Ease of contact, Level of support) from the July 2021 Research NZ 'Consumer Telecommunications Survey'

Figure 6: Satisfaction of Coverage & Availability of providers using Spark's network



Notes: Satisfaction score for 4 providers using Spark's network for coverage and availability from the July 2021 Research NZ 'Consumer Telecommunications Survey'.

6.4. Bundling of electricity and mobile/internet may distort scores

72. A recent trend is that bundles of electricity and mobile/internet are growing in popularity. Currently, bundles account for at least 11% of the market and are growing quickly.[48] Bundling means that a customer interacts with its provider for both electricity and mobile/internet issues, which can create challenges for how customers report customer service interactions for only mobile/internet. By way of example, suppose a customer has a low quality customer service interaction with its electricity retailer – for an electricity specific problem – and also purchases broadband from the same retailer. It is possible that the customer reports a lower score concerning this retailer even though this is unrelated to the retailer's provision of internet/mobile customer service. The opposite could occur too if customer service issues are easier to resolve in relation to the service which is being bundled with mobile/internet.

[48] 11% refers to the market share of Trustpower and Contact, which are electricity providers that offer mobile/internet. The share of bundles is likely higher as we are aware Vocus brands (Slingshot, Orcon) and 2Degrees now offer to bundle electricity with mobile/internet.

7. Proposed intervention may lead to perverse incentives and therefore inefficiencies

73. Here we set out how the NZCC's proposed intervention may cause perverse incentives and therefore inefficiencies. In particular, if the metrics do not fully characterise what customers value (or there is not a material problem to solve) then the proposed intervention is likely to cause inefficiencies.

74. In this section we discuss a number of potential distortions that fall into the following two broad categories:

    a. Distort incentives for providers to efficiently supply and invest in customer service to match consumer preferences. Regarding specific examples, the intervention may:

        i. Disincentivise providers from *avoiding* problems as the two metrics only reward providers for *solving* problems (section 7.1);

        ii. Incentivise providers to prioritise the two specific metrics over other forms of customer service that consumers may prefer. As a result, providers may inefficiently overinvest in the *measured* metrics – meaning the marginal cost of improvements exceeds the benefit to consumers – while also underinvesting in any *unmeasured* dimensions. (section 7.2);

        iii. Distort incentives around customer acquisition, such that providers prefer to shed "difficult" customers that are more likely to report poor customer service (section 7.3); and

        iv. Lead to boundary effects, in which providers benefit from either being within the ranks (as outside providers are viewed as relatively lower quality) or from being outside the rankings (as outside providers are viewed as challenger brands) (section 7.4).

    b. Distort wider competition, such as over price and product offerings. For example:

        i. Distort product offering towards more basic products that have fewer innovative features but means that providers receive a higher customer service score (section 7.5); and

        ii. May deemphasise price and product competition (section 7.6).

7.1. Disincentivises providers from *avoiding* problems

75. As outlined in section 6.1, customer service in the broadest sense should account for both: (a) the need for a customer service interaction at all, and (b) the quality of that customer service interaction. Therefore, when considering customer service in the broad sense, a useful framework is to treat customer service as consisting of two parts:

    a. **Avoiding problems**: meaning that the provider enacts processes that avoid the need for customers to unnecessarily interact with customer service. Some examples include matching customers with the correct product, providing extensive information at the time of purchase, providing an informative website etc; and

    b. **Solving problem (that were not avoided)**: meaning that the customer encounters a problem and needed to contact customer service for a resolution.

76. This two part framework implies that providers face an important trade-off between either investing money to (a) avoid problems from arising in the first place and (b) solving problems that are not avoided. In many instances, it will be more efficient for providers to invest to avoid problems. By efficient, we mean that the provider can improve customer satisfaction at a lower cost (i.e., by reducing more costly solving).

77. When considering this avoid vs. solve trade-off, the proposed league table creates a preserve incentive by pushing providers away from avoiding problems. To illustrate this point, suppose a provider is considering whether to efficiently invest in problem avoidance e.g., by updating its FAQ, product information, or product offering. On the margin, this investment will be more likely to avoid the smaller issues. This is because larger issues are typically more complicated so inherently more difficult to avoid. Therefore, this efficient investment would leave behind the more difficult problems, which receive a lower score on the prescribed metrics as they (a) take more time to solve and (b) make staff appear less knowledgeable. As a result, there are preserve incentives, in which the league table reduces the incentive for providers to (efficiently) improve customer service by avoiding problems all together.

78. Beyond dulling the incentives to improve customer service by investing in problem avoidance, there is likely to be an inefficient reallocation of customer away from providers that are already good at avoiding problems towards providers that are relatively less good. To see this point, suppose that a provider has already invested extensively to avoid problems. By the logic outlined above, this provider is likely to receive a below average "customer service" score and so lose customers to competing providers with higher scores (but are less effective at avoiding problems). This outcome is inefficient to the extent that customers actually prefer problem avoidance.

7.2. Providers may prioritise improving the two metrics instead of delivering high quality customer service

79. The proposed intervention requires providers to prominently display two specific and narrow components of customer service. Focusing on two narrow metrics may introduce incentives for providers to game customer service scores.

80. Goodhart's Law of "when a measure becomes a target, it ceases to be a good measure" provides some guidance.[49] That is, introducing two specific metrics will change the focus of providers, especially, as there is no reason to believe the two metrics chosen better reflect customer preferences than would be targeted by providers exposed to the market. Two plausible outcomes are:

    a. **Inefficient overinvestment to improve the measured metrics**: Customers may respond to the NZCC' endorsed metrics by placing too much value on the metrics. Given the response of consumers, providers have a clear incentive to win more customers by improving their customer service score. Investing to improve these scores, however, is costly and this is passed through to consumers, so that mobile plans increase in price.[50] This investment is inefficient if it raises prices more than customers actually value the two specific measures of customer service. That is, the costs to improving the scores exceed the benefits to consumers.

    b. **Reallocation of spending**: Refocusing providers is likely to be distortionary as providers will reallocate spending (or other resources such as management attention or staff time) *away* from non-measured customer service dimensions and *towards* the measured two measured dimensions. This reallocation is likely to be inefficient as – given the incentives – we would expect providers to be willing to sacrifice a large degradation of customer service in the non-measured dimensions to achieve only a small improvement in the two measured dimensions. Examples of improving scores while providing a worse experience include:

        i. Prioritising speedy rather than durable resolution

[49] Goodhart, Charles (1975) "Problems of Monetary Management: The U.K. Experience". *Papers in Monetary Economics.*

[50] Which is to say this would have the effect of being an industry wide cost increase that therefore flows through to prices. We next cover the scenario where instead of prices increasing, other aspects of quality decrease.

ii. Appearance of knowledgeable or helpful rather than necessarily coming to complete resolution.

7.3. Distorts customer acquisition incentives e.g., by shedding "difficult" customers

81. The proposed scores may cause providers to inefficiently change strategies surrounding customer acquisition. In particular, there will be a lower benefit to attracting "difficult" customers, who are more likely to use customer service and/or report negative customer service interactions.

82. Changing the relative benefits of acquiring different "types" of customers implies that providers will change their customer acquisition strategy to invest more in attracting less difficult customers, while investing less in attracting more difficult customers. In reality, this could occur through switching deals, changes in advertising, or by removing products that are likely to be attractive to "difficult" customers (e.g., landlines is one possibility). To see this point, a provider has two ways to increase its customer service score:

    a. Either acquire "less difficult" customers that are more likely to provide good scores (i.e., shed "difficult" customers); or

    b. Genuinely improve their metrics, which is costly.

83. Recall in section 6.3, we showed that Skinny has significantly higher customer satisfaction than Spark even though Skinny and Spark provide service from a shared contact centre with the same service standards. One likely driver for this difference is that Skinny attracts a "cost conscious" or "deal seeker" demographic, who care less about customer service, while Spark attract an older demographic who care relatively more. Any proposal to rank providers should take into account these demographic effects to enable a like-for-like comparison between providers. Not doing so would likely result in providers responding by competing more intensely for "less difficult" customers (e.g., younger customers or online sales) and relatively less intensely for "more difficult" customers (e.g., older customers or retail store sales).

84. The likely outcome from this change of incentives is to reduce efficiency by (a) increasing the costs of customer acquisition and (b) reducing the quality of matching between providers and customers. This is because providers will be willing to invest more to attract "less difficult" customers compared to "difficult" customers.

7.4. Potential *boundary effect* from the criteria for inclusion into the league table

85. The NZCC proposes that "the dashboard will start with larger providers and expand to include as many providers as possible when sufficient data is available."[51] Such a cut off, may however, lead to competitive advantages and other distortions surrounding the inclusion or exclusion into the league table. While the NZCC has not considered this issue, we note that there are two possibilities regarding competitive advantages. That is, there might be an advantage to being:

    a. **Within the league table**: As consumers start to view any provider without a score to be low quality, therefore leading to an advantage to brands within the league table; and

    b. **Outside the league table**: to avoid the signaling effect entirely e.g., if the scores contribute to a perception that the ranked brands are large incumbents that provide low customer service.

[51] Commerce Commission *Improving Retail Service Quality: Customer Service Consultation Paper*, December 2022, para 57.4, p. 25.

86. Both instances lead to inefficiencies. If there exists an advantage to being *within* the league table then this creates an inefficient bias towards larger providers and so blunts the competitive constraint arising from smaller "challenger" providers. On the other hand, if there exists an advantage to being *outside* the league table then this creates a bias towards smaller providers. This might cause larger providers to create smaller brands that individually drop out of the dashboard.[52]

87. Addressing this potential issue is challenging. First there are pragmatic concerns, such as data collection. Second, and more substantively, a table that ranks a large number of providers may result in small differences in measured performance that were within a margin of error to still cause significant shifts in relative rankings.

88. The boundary effect adds an additional overlay to the distortions listed above. That is, when comparing providers within vs. outside the league table, a wedge might be driven between the incentives surrounding problem avoidance (section 7.1), prioritisation of customer service (section 7.2), and strategies surrounding customer acquisition (section 7.3). Effectively, a two-track market could arise, in which providers outside of the league table have different incentives, so provide a different offering.

7.5. Distort product offering towards more basic products with fewer features

89. Offering new and innovative products and products with more features is typically a net benefit. The proposed intervention, however, may reduce efficiency by dulling incentives to:

   a. **Offer products with additional features**: This is because offering innovative products also adds additional difficulty in providing customer service. Therefore, providers may prefer to offer a more basic offering (i.e., with fewer features) as a means to maintain high scores for "customer service"; and

   b. **Innovate**: by its nature innovation is risky and so – by innovating – a provider runs the risk of reducing its customer service score. A natural outcome is to reduce the incentive for a provider to be the first mover when innovating.

90. To provide concrete examples as to the possibility of this distortion, we note that Spark typically offers services with more features as compared to Skinny. For example, compared to Skinny, Spark offers a greater range in plans and pricing; extra services, and innovative products such as "visual voicemail"[53] and the "Team Up" group discounts,[54] as well as value added services such as handset insurance, Spotify, Spark Sport and Neon. While these services are clearly valued by consumers, they likely imply additional customer service interactions, which lowers Spark's score Vis-à-vis Skinny.

7.6. Potential deemphasis of price and product competition

91. The NZCC's research finds that customers currently mainly choose a product based on price and product fit.[55] The presentation of consumer dashboard focussed on customer service and coming

[52] We assume that separate brands from a single provider would be treated differently for the consumer dashboard. For example, if a provider has brand A and brand B that are differentiated on customer service than an aggregated measure will not be valid and will also be confusing to consumers.

[53] "Spark Voicemail App" Spark, accessed March 9, 2023, https://www.spark.co.nz/shop/mobile-plans/visual-voicemail.

[54] "Teamwork makes the discount work" Spark, accessed March 9, 2023, https://www.spark.co.nz/shop/mobile-plans/team-up/.

[55] NZCC, *Improving Retail Service Quality: Customer Service*, December 2022, para 11, p. 12.

with the NZCC's endorsement, may therefore reduce attention on price and therefore price competition.

92. Recent research on "cognitive spillover" argues that behavioural interventions designed to inform a specific decision, while boosting active decision-making in that domain, may negatively impact decision-making and choice quality in other domains owing to the finite nature of attention that can be allocated at any given time.[56]

93. So, while potentially leading to greater customer awareness regarding relative customer service quality, the proposed intervention may have an overall negative impact inasmuch as decision-making on other valuable differentiators of telecommunications services (price, extensions, bonuses, extent of coverage, bundled items) may be given less rigorous consideration by customers.

[56] Steffen Altmann, Andreas Grunewald and Jonas Radbruch "Interventions and Cognitive Spillovers" (2022) 89 Review of Economic Studies 2293.

8. Alternative solutions may better promote the statutory purpose

94. The purpose of a retail service quality intervention is to promote services that better reflect the demands of end-users of telecommunications services.[57] Based on the lack of evidence of a market failure in relation to customer service, the poor connection between the proposed metrics and the actual quality of the customer experience, and the potential to inefficiently distort behaviour by service providers, the NZCC should consider alternative solutions.

95. Further, as noted in section 3, the NZCC must exercise its powers for the relevant statutory purpose. Given that the evidence suggests that providers are incentivised to ensure that the level of customer service reflects consumer demand, it appears that the NZCC's proposal to give much greater prominence to two particular metrics— speed of resolution and staff helpfulness and knowledge—is driven by a paternalistic view of what customers should be taking into account.

96. A more moderate intervention would also ensure greater proportionality between the problem being solved and the regulatory solution.

97. Alternative solutions include:

    a. One option is to simply maintain the current settings in the absence of evidence that delivered customer services does not properly reflect the demands of end-users.

    b. A next step would be to conduct the surveys as outlined on a provisional basis in order to build up knowledge of the existence of a problem and the suitability of the metrics for creating a league table.

    c. Many of the concerns expressed in this paper relate to proposal for the consumer dashboard to be displayed at the point of sale and the effects this would have on consumer and provider behaviour. That is, the concerns are directed at the attempt to change the factors that consumers take into account rather than simply make more information available. These concerns would be at least partially addressed if the reported outcomes were limited to the NZCC website only. This would mean that information was available to consumers who place a high value on customer service, but not in a way that distorted competition for other consumers who place less value on customer service. Providers could choose to refer to these reports as they do currently with the NZCC's Measuring Broadband New Zealand programme. This may better align the reporting of the data to aspects of customer service that customers care most about.

    d. The NZCC could consider the creation of more reliable metrics which take into account matters such as the avoidance of customer services issues, and adjust rankings for relevant confounders such as customer demographics.

    e. The NZCC could consider issuing guidelines under s 234 of the Act to encourage the development of retail service quality code in relation to customer service.

98. Starting with the sort of interventions identified at (b) and (c) would also fit with the idea of a staged set of regulatory interventions.

99. In terms of legal authority to *require* publication of the consumer dashboard at the point of sale:

    a. Currently this is referred to as an "expectation", with the potential for a binding obligation: Question 13 of the consultation paper asks, "What is your preferred approach for requiring

[57] Telecommunications Act 2001, s 233: "The purpose of a retail service quality code is to improve retail service quality to reflect the demands of end-users of telecommunications services." A telecommunications service is defined as "any goods, services, equipment, and facilities that enable or facilitate telecommunication".

publication of the dashboard by providers, should this be on a voluntary basis, or should the NZCC use its RSQ code powers to require this?"

b. The NZCC's function under s 9A(1)(f) of the Act refers to *the NZCC* making available reports, summaries, and information about RSQ. Accordingly, the NZCC is correct not to suggest that s 9A(1)(f) provides authority to require a provider to publish the consumer dashboard.

c. It is also not clear that a requirement to publish the consumer dashboard comes within the NZCC's RSQ code powers.

   i. First, an RSQ code must be made "in relation to the provision of 1 or more types of telecommunications service" and the RSQ code "must specify which telecommunications services it applies to".[58] Here the proposed consumer dashboard relates to the levels of service experienced across a provider's broadband and mobile business, and is not in relation to a particular service or services.

   ii. Secondly, as set out in section 3 above, the Act envisages an escalating hierarchy of interventions the NZCC can make. The Commission must be careful not to work backwards from a preferred solution, but should engage with the industry as to the nature of the problem to be solved and, at least ordinarily, issue guidelines so that industry has the opportunity to develop its own RSQ code and own solutions to any identified problems. By going straight to the dashboard and threat of an RSQ code to implement it, the Commission has not given industry self-regulation an opportunity to address any concerns over customer service.

[58] Sections 236(1) and 237(1)(a).

Qualifications, assumptions, and limiting conditions

This report is for the exclusive use of the clients named herein. There are no third-party beneficiaries with respect to this report, and the authors do not accept any liability to any third party.

Information furnished by others, upon which all or portions of this report are based, is believed to be reliable but has not been independently verified, unless otherwise expressly indicated. Public information and industry and statistical data are from sources we deem to be reliable; however, we make no representation as to the accuracy or completeness of such information. The findings contained in this report may contain predictions based on current data and historical trends. Any such predictions are subject to inherent risks and uncertainties. The authors accept no responsibility for actual results or future events.

The opinions expressed in this report are valid only for the purpose stated herein and as of the date of this report. No obligation is assumed to revise this report to reflect changes, events, or conditions, which occur subsequent to the date hereof.

All decisions in connection with the implementation or use of advice or recommendations contained in this report are the sole responsibility of the client. This report does not represent investment advice nor does it provide an opinion regarding the fairness of any transaction to any and all parties. In addition, this report does not represent legal, medical, accounting, safety, or other specialized advice. For any such advice, the authors recommend seeking and obtaining advice from a qualified professional.

NERA
ECONOMIC CONSULTING

JAMES EVERY-PALMER KC
DPhil (Oxon), LLM (Harv), LLB(Hons), BA(Hons)

NERA Economic Consulting
Level 11
15 Customs Street West
Auckland 1010
New Zealand
www.nera.com

James Every-Palmer KC
Stout Street Chambers
Level 6
1 Post Office Square
Wellington 6011
New Zealand