

Commerce Commission
Level 9, 44 The Terrace
PO Box 2351, Wellington 6140

Attention: Andrew Young

23 May 2024

2024 review of the Telecommunications Dispute Resolution Scheme

Dear Andrew

Thank you for the opportunity to provide you our views on the effectiveness of the Telecommunications Dispute Resolution Scheme (TDRS) at improving retail service quality for consumers.

As a recent member of the TCF and consequentially the TDRS, our views are formed without bias of incumbency and based on our recent market experience of what consumers value and how to deliver connectivity solutions cost effectively and at a very high level of service quality.

How is Devoli positioned in the market

Devoli has quickly become one of the largest broadband providers in NZ with over 120,000 premises receiving services directly from Devoli or indirectly through one of our retail partners.

Our model is innovative where Devoli does not hold end user relationships but partners with other brands and companies to allow them to provide connectivity solutions and bundle those solutions with other retail services. Two of our largest retail partners are energy companies who have brought competition to the retail broadband market with innovative bundles and offers for end users. Our retail partners often are the best value / lowest priced offering in their respective segments across a wide range of connectivity solutions.

We, and our retail partners, would not have been successful if we had not delivered high levels of service to end users. We note that since joining the TDRS that Devoli has not had a single matter taken to the TDRS.

Devoli's high level observations

Devoli believes that the retail provision of connectivity solutions across Broadband and Mobile platforms is highly competitive with economic returns to market participants being close to the cost of capital and does not have any features of an inefficient market. The market structure put in place in the early 2010's has allowed many new businesses to enter the market with little to no barriers of entry, open and equal access to critical parts of the connectivity value chains, a wide range of offers and products available for consumers to select and an increasing spread of market share amongst industry participants. Recent entrants (such as energy retailers and media businesses) have



successfully captured nearly 20%¹ market share from the incumbent telecommunications businesses.

However, the cost of regulation is significant and an impediment to smaller market participants being able to gain more market share. Regulatory costs are driven by items such as the \$10m Telecommunications Development Levy (TDL), membership and requirements of industry bodies such as the Telecommunications Carriers Forum (TCF) including the TDRS. Devoli estimates that there is a direct regulatory cost of \$25m which is equivalent to over \$1 per residential premise per month. As a result, we observe that many industry participants are opting to avoid industry bodies such as the TCF undermining their usefulness at improving retail service quality to consumers. For businesses that operate in multiple industries (such as energy companies), the cost of industry specific schemes is multiplied without any increasing benefit to consumers.

The TDRS in particular is high cost with marginal, if any, perceived benefit to end users. The TDRS cost is nearly \$2m per annum with only 3,725 cases lodged, and only 48² found against the provider. This equates to a cost of \$40,000 for every successful case.

As noted earlier, nearly 20% of the residential market now receives services from business that are not just telecommunications businesses. Having an industry specific dispute resolution scheme does not appear logical where such a large portion of the market is serviced by multi-industry providers. The Commerce Commissions own research implies that consumers are satisfied with their provider which is reflected in such low levels of adverse findings from the TDRS.

Devoli believes that an industry specific dispute resolution scheme is not required and that an alternative, lower cost, multi-industry scheme should be considered. Such a multi-industry scheme could be developed that has no barriers to membership which would increase the relevance of the scheme at ensuring consumers receive the quality of service that they are willing to accept.

1. How effective have the changes to TDRS been in improving outcomes for consumers?

Given the low volume of cases and outcomes, it is difficult to conclude that consumers overall are receiving increased outcomes from the changes to the TDRS. The proportion of successful cases per connection remains miniscule implying that consumers are receiving high quality service without the need for the TDRS. Schemes such as the TDRS may act as an incentive for industry participants to deliver high quality service but in an open and highly competitive market, Devoli believes that high quality service is an outcome of competition and not schemes such as the TDRS.

What is obvious from membership of the TDRS, and our own experience of the regulatory burden being placed on recent market participants, is that the cost of the scheme is high relative to the outcomes (i.e. \$40,000 per successful case).

¹ Market share held by Mercury Energy, Contact Energy, Nova Energy, Sky Network Television amongst others.

² Settled, Upheld & Partially Upheld TDR decisions, TDR Annual Report 2023

2. Are there any other ways TDRS could be improved for the benefit of consumers

Devoli believes that a different scheme architecture could be considered that would enhance the efficiency of dispute resolution, widen the membership of the scheme thereby increasing the usefulness of the scheme to more consumers while removing some industry anomalies that are prevalent with the industry specific scheme. A new scheme should have the following features:

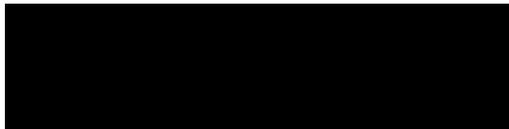
- Widen jurisdiction - Any scheme should cover any entity that provides telecommunication services – not just those that are members.
- Be non-industry specific – Creating a “super utilities” scheme that covers water, energy and telecommunications should be considered.
- New funding mechanism – Having a non-industry specific scheme would enhance efficiency and allow the cost to be spread over a wider scheme participant base. Cost allocation should also take into account the level of cases or successful cases as an incentive for participants to deliver high quality service to consumers as well as commercially rewarding those industry participants that do deliver high quality services.
- Disincentives for spurious cases – Scheme participants incur significant costs when responding to cases. For fairness, consideration should be given to having a small administration fee or some form of cost recovery / recourse where the case is found to be spurious.

3. Are there any issues or opportunities that should be addressed in this review

As noted in our earlier views, Devoli believes that the TDRS should be stopped in its current form and consideration given to a new scheme that covers all utility like services with an ombudsmen remit that can address a wide array of matters. Such scheme should also revisit its cost allocation framework as the current industry forum membership style is not suitable in the current industry structure where large proportion of consumers are not covered by the scheme.

Thank you for the opportunity to share our views and would be happy to explore them further with you if you so desire.

Kind regards



Karl Rosnell

Chief Executive Officer



Appendix – Devoli comments on 2021 TDRS changes to key areas

Topic	Devoli Observations
<p>Awareness – increasing consumer awareness of the scheme that, at the time of the 2021 review, was just 13%</p>	<ul style="list-style-type: none"> • We understand that awareness of the TDRS has increased but so have costs associated with increasing awareness. • Outcomes have not changed with very small percentages of end users gaining any outcome from the TDRS and no discernible increase in consumer outcomes since 2021
<p>Practice management – improving the way the scheme produces position statements and case studies.</p>	<ul style="list-style-type: none"> • No comment
<p>Systemic issues – improving reporting to better identify and address systemic issues</p>	<ul style="list-style-type: none"> • With such low numbers of outcomes, Devoli does not believe that there are systemic actionable issues other than meaningless classifications such as “Billing” or “Faults”
<p>Complaints handling – improving the complaints handling processes and reducing turnaround times.</p>	<ul style="list-style-type: none"> • No comment
<p>Jurisdiction – reducing exclusions that limited the type and number of complaints the scheme could adjudicate</p>	<ul style="list-style-type: none"> • There has been an increase in membership of the TCF (such as by Devoli, ██████████) but this has not been driven by any desire or need to be a member of the TDRS. • Large parts of consumers providers are not represented by TDRS members undermining the relevance of the TDRS. • Compulsory membership via TCF is not suitable in the current industry structure and that a new model which widens the relevance of the TDRS by ensuring that all providers of connectivity solutions are captured
<p>Governance – improving the governance and increasing the independence of the scheme</p>	<ul style="list-style-type: none"> • No comment

