

**Submission  
by**

**R W M Dowler**

**On the  
Discussion Paper  
Titled**

**“Protecting businesses and consumers  
from unfair commercial practices”**

**Issued by**

**The Ministry of Business, Innovation and Employment**

**[competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz)**

**February 2019**

## **Introduction**

Thank you for the opportunity provided to complete submission. My submission is focused upon the topic of protecting consumers from unfair commercial practices.

First, I express support for improved conduct regulation across commercial enterprises in general to further protect consumers.

I also note the recently released reports from the FMA and RBNZ regarding conduct in both the banking and insurance sectors and the subsequent government announcement of Cabinet agreement to fast-track customer protection measures in the financial sector.

My key submission point is that the learnings from these recently released financial sector reviews are equally relevant to commercial enterprises in general and that the Ministry should consider as part of this review recommending the application of the same proposed regulatory outcomes for banks and insurers to commercial enterprises more broadly.

In support of my submission, I attach as an appendix a copy of the submission that I completed to the Commerce Commission regarding the “Copper Withdrawal Code.” I believe that this submission to the Commerce Commission clearly highlights that the issues identified in the banking and insurance sector equally exist in other sectors, including the telecommunications sector in this specific case.

No part of this submission is required to remain confidential.

# **Appendix**

**Submission  
by**

**R W M Dowler**

**To the**

**Commerce Commission**

**On the**

**Copper Withdrawal Code**

**[regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)**

**November 2018**

## **Introduction**

Thank you for the opportunity provided to deliver comment on the Commerce Commission consultation regarding the development of a Copper Withdrawal Code related to Chorus.

Noting the Commission's interest in hearing from consumer groups, you may consider this submission as being from such a consumer group, or at the very least from someone who represents wider consumer interests, with the submission being based on my personal experience of dealing with retail telecommunications groups.

I also note from the just released Consumer Issues Report for the 2017-18 year that, "retail telecommunications remains the most complained about industry."

## **Submission Content**

I support the proposal to develop a Copper Withdrawal Code to regulate Chorus to provide a degree of consumer protection at the time that copper phone lines are to be removed.

However, while I consider it necessary to provide a Code in relation to the practices that Chorus adopt, I do not consider such a Code to be sufficient to deliver to the Commission's stated objectives.

I submit that there is little point to introducing such a Code applicable only to Chorus when consumer interaction relating to telephone and related services occurs via the retail telecommunications groups. The consumer protections that the Commission is focused upon delivering via the Code will only ever be achieved if and when those retail telecommunications groups are also brought within the provisions of such a Code, or via similar provisions through some other regulatory mechanism that demands from and imposes appropriate conduct on such retail telecommunications groups.

From my personal experience, it is clear that the telecommunications groups are, at times, deliberately avoiding offering fibre replacement for copper to consumers, even when fibre is available, where the telecommunications entity involved has an alternative offering that provides additional benefits to the telecommunications carrier, even if at greater expense to the consumer.

Recent media reports relating to Vodafone pleading guilty to nine charges brought by the Commerce Commission over Vodafone's "FibreX" service support this contention.

I submit that any such retail telecommunications group that has the capacity to offer a fibre connection should include information about the available fibre alternative, including costs, in a similar way to the Code requirements suggested for imposition on Chorus at the time that the copper service is being withdrawn. Such information on the

fibre service should be in addition to any other offer that such retail communications group may wish to make to a consumer.

I now refer to my e-mails to the Commission variously dated 7 August, 7 November and 13 November 2018 regarding my interactions with Vodafone, Chorus and Spark covering the period since installation of a fibre line at my residence in March 2015.

In summary, in 2015 there were two copper lines attached to my residence, one for business purposes and one for personal use. I sought to have both lines changed to fibre. At various times over the intervening period, both Vodafone and Spark informed me that I could not have both lines replaced with fibre, albeit my contact with Chorus has always resulted in me being informed that there was no technical reason why I could not have two fibre lines.

In the event, as neither Vodafone nor Spark would assist with arranging for two fibre lines, I arranged for my business line to be changed to fibre in 2015, retaining a copper line for personal use.

As covered in my correspondence with the Commission earlier this month, Vodafone communicated with me in July this year, stating, "With Spark announcing they'll be closing the PSTN Network that's used for your home phone, we want to make sure you're well set up for the future." The letter then went on to state, "That's why next month we're moving you from your old copper phone service to Home Phone Wireless for just \$49.99 a month."

I consider that this advice from Vodafone to be misleading in a number of ways, as follows:

- There is a clear implication that the Spark changes to the PSTN impact the existing copper service. I understand this implication to be false, as the changes being made by Spark simply do not impact in any way the continuation of the copper service to an individual consumer.
- There is also a clear implication that the change to wireless is being imposed by Vodafone and that I do not have a choice to continue with the copper service, which I also consider to be false, at least at a technical level.
- In the event, the first monthly account included charges totaling \$59.98, not the \$49.99 a month stated in the offer.
- Finally, I consider that Vodafone misled me by not offering me a second fibre line at the time of advising me of the proposed change to wireless being imposed by Vodafone, despite such a fibre solution being technically available and such a fibre service also being a cheaper alternative for me than the wireless option that the correspondence implied I had to take.

The availability of the cheaper alternative second fibre line has subsequently been proven, as my correspondence with Vodafone criticising the poor consumer service delivered to me has resulted in an agreement that the remaining copper line, since converted to wireless, will finally be changed to a second fibre line installation without

any installation cost and with the monthly cost being less than either the copper or wireless options.

I acknowledge the good outcome that it appears will finally be achieved for me, hopefully early in the New Year, but I am less than impressed with the effort that I had to expend to achieve it. I am therefore focused via this submission in proposing that the Commission ensure that the Code or other regulatory mechanism assist in helping consumers more generally avoid a similar experience.

It is also clear from my experience that the practices of the retail telecommunications groups are focused on delivering profits to the phone companies, often at the expense of consumers. This sounds somewhat reminiscent of the findings of the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the findings from the review of banking recently conducted in New Zealand by the Reserve Bank of NZ and the Financial Markets Authority.

To quote from the Australian Royal Commission's interim report executive summary, "Why did it happen? Too often, the answer seems to be greed – the pursuit of short term profit at the expense of basic standards of honesty." I submit that the same comment can be made about the actions of retail telecommunications groups in New Zealand.

You will therefore not be surprised to learn that I have corresponded with the Minister of Commerce and Consumer Affairs this month suggesting that this government has an opportunity to make a real difference, not by focusing on the banks, but by looking beyond to determine what the regulatory environment around conduct should be for commercial enterprises in general.

By the way, where was the Commission involvement in the NZ banking review, noting that the Commission is responsible for the oversight of the Credit Contracts and Consumer Finance Act? I submit that I do not wish to see a similar absence of involvement from the Commission in relation to the clearly inappropriate practices of retail telecommunications groups in New Zealand.

### **Confidentiality**

No part of this submission is required to remain confidential. Instead, I welcome the eventual publication of this submission by the Commission as a means of making publicly available the details of my personal experience of the practices of the retail telecommunications groups, with the objective of supporting development of better conduct from the retail telecommunications groups and better consumer outcomes longer term.