tuanz

TECH USERS ASSOCIATION

Submission on the Commerce Commission's open letter in regards to marketing of alternative services to consumers during copper/PSTN withdrawal.

27th August 2021

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Introduction

1. TUANZ is pleased to submit in relation to the open letter sent by the Commission to stakeholders on the 4th August 2021 on the topic of the marketing of alternative services to consumers during copper/PSTN withdrawal. This submission is a Public Version and contains no confidential information.

2. Our address is PO Box 65503, Mairangi Bay, Northshore 0754 or Level 7, 62 Victoria Street West, Auckland Central. Our email address is office@tuanz.org.nz and our website can be found at https://www.tuanz.org.nz.

The Technology Uses Association of NZ Inc (TUANZ)

3. TUANZ is the association for the users of digital technology and connectivity which is in its 35th year since incorporation. We are unique - **we believe there is no other group or organisation that is representative of the people and organisations that are the end users of digital technologies in the manner that TUANZ is. We value our independence and will always seek to speak for users without undue influence.**

4. Our member's want to see a lift in the digital economy along with the continued development of strong markets across the technology and connectivity sectors providing real choice for end users – whether corporations or consumers. We seek a national drive to leverage the opportunities that we have with our world leading digital networks. **TUANZ has the vision where New Zealand is one of the top 10 digital ready nations by 2030.**

5. TUANZ position is consistent and clear: **The availability of competitively priced, good quality, fast connectivity in all parts of NZ is a critical economic enabler for the future of the NZ economy.**

6. TUANZ is a not-for-profit membership association with over 170 members, predominantly large organisations with a strong dependency on digital technology and connectivity as well as small enterprises and individual members. These small businesses and residential users are the customers of our large corporate members, who are just as focused on the quality of their customers' connectivity as their own.

Jurisdiction

7. TUANZ has been a key advocate over the years on many of the positive changes to the telecommunications market in New Zealand. We participated fully in the most recent review of the Telecommunications Act, with strong advocacy positions around the need to improve the overall service performance at both the wholesale and the retail level.

8. In our submission on the draft bill, we supported the move to require the Commerce Commission to monitor the performance within the telecommunications market and specifically the requirement to hold the industry to account on their report on retail service quality.

9. **We agree with the Commission in para 4 of the open letter in regards to the view that the Commission is right in proposing to issue guidelines in this matter under section 234 of the Telecommunications Act 2001**.

Actions leading to this Letter

10. Like other consumer groups, TUANZ has over time received anecdotal evidence that the information being provided to consumers facing the decision to switch services as a result of a switch off of the PSTN or the underlying copper network is confusing at the least and misleading at worst.

11. While we realise that the requirement to switch in this situation is valid, in our experience there are also cases where this is being used to market alternative services where neither of the underlying reasons is currently being undertaken.

12. Furthermore, we have been concerned over the general marketing of alternative access services not only in this specific situation but across the board, especially where the consumers are less technologically aware.

13. As a result of our concern, we commissioned the Behavioural Insights Team (BIT) to review and update an earlier report provided to the Commerce Commission in 2019 entitled “Addressing inertia and complexity in New Zealand’s telecommunications market”.

14. We have not provided the full report to the Commission as part of this submission as it is the second issue addressed in this report (complexity)

that is important in relation to the marketing of alternative services. The report however concludes the following:

> *"...complexity is relatively high in telecommunications due to the number of options and the frequent bundling of services. In addition, there is evidence providers can deliberately create confusion to increase revenues. Our review suggests comparison tools have potential but can also fail to help consumers navigate complexity in the market. We have identified 5 promising solutions which do help consumers navigate complexity in the market." p2 BIT Report*

15. The report includes a review of the current state of the broadband market in 2021, and the relevant section is attached in full to this submission as Appendix 1. A summary of the changes since the 2019 review are as follows:

    a. **Increased broadband use**. Average monthly broadband usage in 2020 increased 37% from 2019 usage representing a 77GB increase to 284GB,

    b. **An increase in uncapped broadband plans**. Most users are now on uncapped plans or plans that are flexible.

    c. **The introduction of super fast fibre.**

    d. **Faster internet speeds due to decreasing copper broadband connections.** There was a 24% decrease in copper connections between 2019 and 2020.

    e. Increased use and advertising of fixed wireless broadband.

16. In the section of the report addressing complexity, BIT state that the broadband market has become "complex and unclear".

> *"This complexity is also evident in the broadband market. Broadband customers need to choose between the type of connection (ADSL, VDSL, fibre, hyperfibre or fixed wireless) and the data cap.*
>
> *Each of these services delivers different service experiences. Each has certain attributes around service quality such as consistency of speed, network congestion, and the simple nature of how fixed wireless networks act when busy. However, these differences are not clearly set out in the marketing and sign-up processes of providers. And although the market has a product disclosure code, it is unclear that this code meaningfully helps consumers compare different plans. A recent report by the Australian Securities and Investment*

Commission and the Dutch Authority for Financial Markets shows the limits of disclosure schemes, emphasising that 'Simplifying disclosure does not solve complexity', 'Few consumers pay attention to disclosure', and 'Warnings can backfire'.[1]" BIT Report, p19

17. In the scope for this revised report we also asked BIT to review international experience and provide a range of possible solutions to address the issue of complexity. We asked them to give an indication of the impact of each solution and the feasibility of implementing these in the New Zealand market. The report suggests 5 possible solutions to address complexity.

18. **Follow key guidelines when presenting complex information** (Feasibility = medium; Impact = low)**.** These guidelines were also set out in the 2019 report as follows:

    a. Prices should be easily comparable between providers and plans. This means providers and comparison tools should present prices in a consistent manner (for example, per month or annual costs).

    b. Providers should use metrics that are consistent across providers. In addition to comparable pricing, other relevant metrics (such as included features) should be consistent and comparable between providers. This would in turn make comparison tools more useful for consumers.

    c. Providers should not offer 'dummy' options. There should not be any options that would never make sense for anyone to purchase (because they would always be better off with another option from the same provider).

19. **Test the best ways of presenting information to maximise understanding and optimal decision-making** (Feasibility = high; Impact = medium). The same information can be made easier or harder to understand, depending on the way it is presented. Research shows that even just the order of the information can change understanding and decision making. Testing different ways of presenting information would help uncover the optimal way of presenting information— such as the placement, prominence and inclusion of different components of a plan.

[1] ASIC and AFM (2019). Disclosure: Why it shouldn't be the default: A joint report from the Australian Securities Commission (ASIC) and the Dutch Authority for the Financial Markets (AFM). Retrieved from https://download.asic.gov.au/media/5303322/rep632-published-14-october-2019.pdf

20. **Test what information should be included in a product disclosure statement (PDSs)** (Feasibility = high; Impact = medium). In 2013 the industry implemented a broadband product disclosure scheme. At the time TUANZ criticised the scheme for the lack of technical details such as how much international bandwidth the provider is buying, how many customers are sharing the line, or what national backhaul arrangements the provider has.[2] There have been various suggestions over time of the inclusion of other retail service quality data.

> *"Product disclosure of retail service quality is increasingly important with the expansion of fibre, as it is a standardised product which broadband providers buy and package with their own support to consumers. This means retail service quality is one of the few factors which differentiates broadband providers" BIT Report p.26*

21. **Ensure information presentation standards are imposed by regulators** (Feasibility = medium; Impact = high). Information presentation standards may need to be imposed by regulators.

> *This is because there is some evidence that having just one firm providing better information has little effect— a study into foreign exchange pricing transparency found that whilst simplified information helped consumers make better decisions, it did not work if only one provider used simplified information (and all others had more complex presentation).[3] BIT Report p. 26*

22. **Hold providers accountable for the outputs of consumer choices** (Feasibility = medium; Impact = high).

> *Although improving the information given to consumers will help, a recent report by the Australian Securities and Investment Commission and the Dutch Authority for Financial Markets highlights that 'Simplifying disclosure does not solve complexity', 'Few consumers pay attention to disclosure', and 'Warnings can backfire'.[4]*

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[2] TUANZ (2014). Product disclosure. Article. Retrieved from https://tuanz.org.nz/2014423product-disclosure/

[3] The Behavioural Insights Team (2018). The impact of improved transparency of foreign money transfers for consumers and SMEs. Final Report. Retrieved from https://www.bi.team/wp-content/uploads/2018/03/The-impact-of-improved-transparency-on-foreign-money-transfe rs-for-consumers-and-SMEs_WEB.pdf

[4] ASIC and AFM (2019). Disclosure: Why it shouldn't be the default: A joint report from the Australian Securities Commission (ASIC) and the Dutch Authority for the Financial Markets (AFM). Retrieved from https://download.asic.gov.au/media/5303322/rep632-published-14-october-2019.pdf

A promising idea to go beyond disclosure is to hold providers accountable for the outputs of consumer choices (i.e. do they choose the best plan for them), rather than just focusing on the inputs for consumers (i.e. is it possible to make the right choice from the given information?). BIT Report p27

23. It is important to note that these solutions are only suggestions with several of them having only a medium level of feasibility. However they do present concepts and ideas that may be used in developing any code. We are specifically drawn to the ideas around implementing key guidelines that are tested to find the optimal way of presenting information rather than relying on the industry to decide what is best for consumers. We are also drawn to the idea of reviewing the current product disclosure statements in light of the changed marketplace and the different service qualities of the underlying broadband technologies.

Recommended Actions

24. Based on the information provided in the open letter, the report from BIT and our general anecdotal evidence we advocate for the following actions:

    a. We agree with the Commission issuing the principles and outcomes to the industry as guidelines under section 234 in the expectation that RSPs would incorporate them into an Industry code through the TCF;

    b. That any code development be with the involvement of user representatives including TUANZ, and utilise the idea of testing prior to implementation;

    c. That this new code cover not only the marketing of alternative services in the situation of copper/PSTN withdrawal but across all marketing of all connectivity options; and

    d. That this new code replaces or updates the Product Disclosure Code with requirements to present information about services clearly in simple to understand statements which are easily accessible for all users.

Final Comments

25. We would like to advise the Commission that in line with our positions above, TUANZ has written to the TCF, requesting engagement in the development of any code to address the concerns raised in the open letter. We have also offered to provide the full relevant sections from the BIT report to the TCF to contribute to this work. We have received an initial positive response from the TCF on our letter.

26. TUANZ welcomes the opportunity to provide the Commission with this submission in regards to the open letter regarding marketing of alternative services to consumers during copper/PSTN withdrawal. This paper provides a summary of feedback from our organisation that represents actual users of technology and digital communications. We have attempted to provide a succinct and clear enunciation of the views of our members.

27. We look forward to working further with the Commission on this matter..

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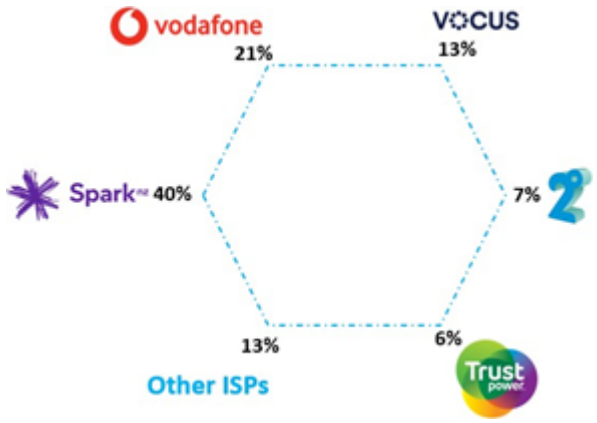
Appendix One : The Broadband Market in 2021. BIT Report, pages 7 -10

There are five main fixed broadband providers in New Zealand, as shown in Figure 2. These are Spark, Vodafone, Vocus, 2degrees and Trustpower.[5] There are also a number of smaller providers who make up 13% of the subscriber market, and often serve rural households. Broadband costs are somewhat above the OECD average for fixed-line broadband.[6] Access is widespread, with increasing investment in ultra-fast broadband rollout and 5G infrastructure— 87% of New Zealanders should be able to connect to fibre by 2023.

Figure 2: New Zealand's main internet providers and their 2020 market share in connections



Although access to high-speed and high-usage plans has been increasing, some plans are more likely to be tied to other conditions. For example, Vodafone's $73 high-user plan can only be purchased if the person also has a monthly mobile plan from Vodafone. Although cheaper deals are beneficial for consumers, tying them to other conditions (also called bundling) raises the complexity of the telecoms market for consumers and may be detrimental to consumer welfare. This is a point we return to with more detail in the Complexity section.

[5] Note that the market share for Spark includes the market share of its sub-brand Skinny.
[6] At a more granular level, broadband costs are above the OECD average for entry, medium and high user plans, but below the OECD average for ultra-high user plans (unlimited data with high 900Mbps speed).

Changes to the broadband market since our 2019 review

There are several changes to highlight, which centre around the common themes of increased usage and speed. Increased speed means users can access online content faster, which should promote consumer welfare. Yet these changes have implications for the behavioural biases which impact consumer welfare.

Increased broadband usage

There has been a large increase in broadband data usage, partly due to COVID-19 and the lockdown in New Zealand which forced people to spend most of their time at home. Average monthly broadband usage in 2020 increased 37% from 2019 usage, which represents a 77GB increase to 284GB.[7] Increased usage magnifies the impact of all four biases highlighted in our 2019 report: inertia, complexity, present bias and mis-estimation will all have more of an impact on consumer welfare. For example, increased usage raises the stakes of choosing the right plan. If a consumer chooses a plan which is too slow, or with a data cap which is too low, the impact of the slow speed or low cap will be magnified due to increased online activity.

An increase in uncapped broadband plans

Most users in New Zealand are on uncapped plans or plans that are flexible depending on data use.[8] This is shown in the plans offered by the largest broadband providers. As of 2021, Spark's main urban plan is the flexible Unplan which allows unlimited usage,[9] two of Vodafone's three main plans are unlimited,[10] Vocus' business plans are unlimited,[11] two of 2degrees' three main plans are unlimited,[12] and all of Trustpower's plans are unlimited.[13]

As with the increase in uncapped mobile data plans, the increase in uncapped broadband plans means increasing numbers of consumers do not have to worry about their data usage and the associated challenges with estimating usage— which was one of the four challenges for consumer welfare highlighted in our 2019 review.[14]

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[7] Commerce Commission (2021), op. cit.
[8] TUANZ (2020). Working From Home. Webpage. Retrieved from https://tuanz.org.nz/working-from-home-tech/
[9] Spark (n.d.). Plans & pricing. Webpage. Retrieved from https://www.spark.co.nz/shop/internet/plans-and-pricing
[10] Vodafone (n.d.). Broadband. Webpage. Retrieved from https://www.vodafone.co.nz/broadband/internet-plans/plan-options/
[11] Vocus (n.d.). Broadband plans. Webpage. Retrieved from https://www.vocus.co.nz/broadband-plans
[12] 2degrees (n.d.). 2degrees does NZ Broadband. Webpage. Retrieved from https://www.2degrees.nz/broadband/plans/
[13] Trustpower (n.d.). Power and broadband. Webpage. Retrieved from https://www.trustpower.co.nz/power-broadband
[14] See the 'Consumers are poor at estimating their future needs' section.

The introduction of super-fast fibre

The next generation fast fibre services has recently been introduced by Chorus ('Hyperfibre') whilst the others (Enable and Ultrafast Fibre) have announced the development of these services.[15] Chorus' hyperfibre describes a fibre connection with speeds of up to 8,000 Mbps for households, businesses and education providers, for both downloading and uploading content. This is significantly faster than speeds of up to 900/400 Mbps downloading/uploading speeds for fibre, and 60/10 Mbps for VDSL.[16]

Although the option of accessing hyperfibre should promote the welfare of telecommunications users, it is significantly more expensive than standard fibre (at $149 - $199 a month vs. $65 - $149 a month[17]), which increases the potential for consumers to overspend if they mis-estimate their needs. There is some online guidance for households outlining whether hyperfibre is right for them— though this guidance includes benefits that are less tangible such as 'Boast about the fastest residential connection' which may encourage some households to buy the most expensive product even if they do not need the extra speed.[18]

Faster internet speeds due to decreasing copper broadband connections.

The number of copper broadband connections (including high-speed VDSL) dropped to 441,000 in 2020, representing a 24% decrease from 2019.[19] This reflects the uptake of high-speed fibre broadband plans as well as the increase in sales by Spark and Vodafone of fixed wireless services off their 4G mobile networks.

Higher internet speeds should increase consumer welfare by allowing smoother access to online content. If the trend continues it may also lower complexity in the market, as speed becomes less of a differentiating factor for consumers to weigh up across different plans (though see the section above on the introduction of high-speed fibre plans which may go the other way and increase complexity).

Increased use and advertising of fixed wireless broadband

There has been a substantial increase in the number of fixed wireless broadband connections, with 221,000 connections in 2020. This is up from 191,000 in 2019, representing a 15.7% increase. New Zealand's use of fixed wireless is also high by international standards: in 2020 New Zealand had the third highest subscription rate in the OECD, with 4.5 subscriptions per 100 people.

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[15] https://hyperfibre.co.nz/
[16] Chorus (n.d.). Hyperfibre - NZ's fastest broadband. Website. Retrieved from https://www.chorus.co.nz/broadband/hyperfibre
[17] Chorus, op. cit.
[18] https://hyperfibre.co.nz/hyperfibre-options/home
[19] *Commerce Commission (2021), op. cit.*

Fixed wireless subscriptions are more likely to be capped, which in turn increases issues with mis-estimation by consumers and the possibility of purchasing a plan with either too much or not enough data. As noted in our past review, if consumers were looking to minimise costs they would select plans that resulted in the lowest average invoice, even if that means sometimes paying extra for exceeding it. However, many consumers choose plans so that they rarely or never pay excess charges, and as a result, pay a lot more than needed in the months when their usage is lower, and pay more than needed overall.

One behavioural phenomenon driving this over-estimation is loss aversion, which describes our tendency to feel losses more strongly than equivalent gains.[20] In this context, the potential loss of money through excess charges has a disproportionate impact on a customer's choice, and can lead to a plan with more data than needed. Another behavioural phenomenon driving this over-estimation is ambiguity aversion, which describes our tendency to prefer options where the probabilities are known and to avoid ambiguity or uncertainty.[21] Buying a large data cap is a way of providing the consumer with certainty that excess charges will not emerge.

[20] Tversky, A., & Kahneman, D. (1991). Loss Aversion in Riskless Choice: A Reference-Dependent Model*. The Quarterly Journal of Economics, 106(4), 1039–1061

[21] Ellsberg, D. (1961). Risk, Ambiguity, and the Savage Axioms. The Quarterly Journal of Economics, 75(4), 643–669.