

**Telecommunications Carriers' Forum**  
**Project Scope for**  
**TCF Code Enforcement Working Party**

**Date Submitted:** 1 November 2010

**1. Issue Identification**

TCF members want the TCF to be seen as a credible self-regulatory body capable of designing and managing industry standards. Members also want a subset of TCF Codes to become mandatory minimum standards applying to all telecommunications service providers in New Zealand, in order to ensure that all telecommunications service providers in New Zealand provide a core set of basic services and service levels to end users and emergency and interception agencies.

Each of these requires that the TCF implement a consistent and credible self-regulated enforcement framework capable of monitoring and assessing compliance with TCF Codes and penalising non-compliance.

**2. Background**

As the New Zealand telecommunications market becomes increasingly fragmented - with competition, technology and changing market structures creating opportunities for an increasing number and type of telecommunications service providers, a set of mandated industry standards is becoming increasingly likely. Further, it is important to maintain the industry's reputation and consumer's confidence in the services provided by TCF members.

In the course of consultation on how the TCF's structure can change to better serve members, it has become apparent that members (or at least the large majority of members) support:

- The introduction of a minimum set of codes that all members must sign up to (where those codes are relevant to a member's business);
- The TCF advocating for legislation mandating compliance by all telecommunications service providers with these codes (where relevant to their businesses); and
- A future where all telecommunications service providers are members of the TCF (ideally by preference, but potentially by mandate) and face the same set of minimum industry requirements and costs of operating as telecommunications service providers in New Zealand.

Today, a number of TCF Codes do incorporate enforcement provisions (typically performed by a nominated Enforcement Agent). However, there is no overarching enforcement framework ensuring consistency between Codes, or consistent enforcement.

### 3. Proposal

The TCF will develop a self-regulated TCF Code Enforcement Framework. Such a framework could include:

- Creation of a compliance and enforcement role for the TCF (performed by the TCF CEO, TCF Chair or their nominees, some other new TCF role, or by an independent body) which would be responsible for:
  - assisting TCF members to understand their TCF Code compliance requirements;
  - promoting TCF member compliance with TCF Codes;
  - assessing and monitoring TCF members' (and/or non-members') compliance with TCF Codes.
- Creation of transparent processes by which TCF members, and the TCF, can:
  - assess and monitor their and others' compliance with TCF Codes;
  - raise compliance concerns;
  - investigate compliance concerns; and
  - take enforcement action where appropriate.
- Creation of an appeal process whereby interested parties could appeal decisions taken by the TCF in its enforcement role to an independent body.

It is expected that any TCF Code Enforcement Framework would recognise the different enforcement needs of the different categories TCF Codes (regulated Codes, non-regulated voluntary Codes, non-regulated Compulsory Codes), but would assess and monitor compliance with all three categories of Code.

Any Code Enforcement Framework should be as simple and cost-effective as possible, enable decisions to be made in a timely manner, and enhance the end user experience. Consideration will need to be given to the role of third parties like the TDR Scheme Agent and Emergency Services agencies when developing the Code.

A high level framework setting out the proposed approach for the Code is attached as Appendix A. This will be used to guideline the development of the Code.

### 4. Expected Deliverables

The deliverables from this project are:

- a) A TCF Code Enforcement Framework; and
- b) An agreed TCF position on:
  - a. the initial set of Compulsory TCF Codes; and
  - b. legislation (if any) governing minimum industry standards and TCF membership.

## 5. Working Party Membership

	Name	Organisation	Email
<b>Project Leader:</b>	Céline Gilbert	Vodafone	Celine.Gilbert@vodafone.com
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	TBA	Commerce Commission	
	TBA	Ministry of Economic Development	

## 6. Timing

Once the Project Scope is approved the CEFWP will submit the proposed high level framework for the code to the Board for approval, along with a timeline for the development of this code.

## 7. Resources

The TCF budget already includes an allowance for work related to compliance which will be used for this work.

## 8. Recommendation

It is recommend that the Board:

1. **Approve** this Project Scope.

## CODE ENFORCEMENT FRAMEWORK: HIGH LEVEL VIEW

### INTRODUCTION

[OVERVIEW, OBJECTIVES AND PRINCIPLES (inc balance of carrot and stick), DEFINITIONS, SCOPE OF THE FRAMEWORK, ADMINISTRATION AND REVIEW PROVISIONS, STRUCTURE OF THIS DOCUMENT]

### IMPLEMENTATION

- The enforcement framework is intended to apply to all TCF documents (Codes, Guidelines, ...) where there is a requirement for a compliance and enforcement mechanism.
- Codes should be split in 2 categories:
  - o Enforceable: those which intended to create enforceable obligations and those regulated by the Commission
  - o Non enforceable: others
- Commencement date and implementation timetable
  - o Target date for code approved and implemented (for some TCF Codes at least): 1 April 2011
  - o Presume this may vary for different codes
  - o Grace period for compliance (etc)

### COMPLIANCE MONITORING

- Monitoring procedures are primarily defined in each TCF documents.
- Signatories to TCF enforceable documents will self certify compliance annually (together with timely notification of self-identified non-compliance)
- There would be only one Enforcement Agent who would work across all Codes and would be responsible for any monitoring.
- The following functions should be detailed:
  - o Supporting Signatories in resolving any potential breach
  - o Monitoring data and compliance
  - o Investigation of breach

- Decision on appropriate sanctions
- The above functions could be managed by one or several person/bodies

## SCHEME REPORTING

- Enforcement Agent to report at least once a year (TCF Annual report??) on compliance with codes, the number of breaches, complaints, investigations and other useful information
- For codes with defined Service Levels, performance against the Service Levels could be made public on a regular basis.

## INVESTIGATION AND ENFORCEMENT

- Different types of investigation
  - Routine e.g. for failing to report
  - Moderate e.g. risk of customer harm / system damage
  - Urgent / severe e.g. immediate customer harm / system damage

With some typing of likely investigations and perhaps a staged or escalation approach. Key is to keep the process simple and efficient - but moreover to avoid protracted investigations where possible.

- Four types of complaints/enforcement are envisaged:
  - For customer initiated/related complaints, TDRS would remain the forum for resolution. When there are systemic or serious concerns raised by the TDR Agent, it could refer them to EA
  - For alleged signatories' breaches of a code, the EA would accept complaints, self-reports or breach or conclude from its compliance monitoring or in some other inputs that it should kick off an investigation.
  - For bilateral issues between signatories, the Dispute resolution provisions included in their bilateral agreement would apply.
  - The Commission would continue to have its legislative enforcement role in regard to regulated codes (and there was support for seeking changes to the Act to allow enforcement by the Commission of other codes that the TCF had submitted to the Commission for endorsement).
- Process and rules of engagement for enforcement action would be developed by benchmarking other schemes from overseas and other jurisdictions and with the intention to reuse as much as possible from proven processes.
  - Process and procedures (i.e. timescales, notices etc)
  - Rights and obligations of members e.g. to cooperate and participate in process
  - Sanctions

- Appeal and escalation
- Options for an appeal to decision
- Who gets involve in the process and when? Expert/investigator? CC??

#### **SANCTIONS / REMEDIES**

- Sanctions would be on sliding scale:
  - Caution notice of breach
  - Warning notice of breach
  - Public censure notice
  - Financial penalties (that could be written off in certain circumstances e.g. if the breach was self reported)
  - For continued non compliance, temporary suspension from the TCF or suspension of access to numbers (if TCF is responsible for numbering management.)