

15 May 2025

Chief Executive Officer and General Counsel  
Vector Limited  
c/o Lindsay Francis & Mangan Lawyers  
Level 18, 41 Shortland Street  
**Auckland 1010**

Attention: [REDACTED] and [REDACTED]

By email only: [REDACTED], [REDACTED]

### **Fair Trading Act 1986 - Compliance advice**

1. The Commerce Commission (**Commission**) has been investigating Vector Limited (**Vector**) in relation to the unfair contract terms (**UCT**) regime under the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation.
2. In summary:
  - 2.1 the Commission is of the view that Vector used standard form contracts for the supply of electricity connection services (**Services**), where the contracts contained terms that we consider a Court would likely find 'unfair' under section 46L of the FT Act. The reasons for the Commission's views are set out in further detail below in this letter.
  - 2.2 Vector has agreed to make changes to its contract templates for the Services going forward and will apply the amended terms to any existing contracts on foot.
  - 2.3 In light of the changes made by Vector, the Commission has decided to conclude the investigation by issuing a compliance advice letter that will be published on the Commission's website.
3. We bring these matters to your attention to assist Vector in complying with its obligations under the FT Act. If Vector is unsure about its legal obligations under the UCT regime, we recommend that it seeks further legal advice.

## The investigation

4. The Commission investigated a complaint from a business in trade that alleged:
  - 4.1 Vector prepared a customer works agreement (**CWA**) based on its CWA template (version 7) for the supply of the Services for a property development project.
  - 4.2 Vector would not negotiate any of the pre-prepared general contract terms in the CWA.
  - 4.3 Some of the terms in the CWA were unfair pursuant to section 46L of the FT Act, including a requirement for the complainant to make full upfront payment of the contract value, with no certainty on the timing for commencement of the Services and no liability on Vector for any delays for the supply of the Services.
5. During the investigation, the Commission considered the following information:
  - 5.1 Information supplied to the Commission by Vector;
  - 5.2 Open-source information relating to Vector's business; and
  - 5.3 The complaint received by the Commission as described in paragraph 4 and further information from the complainant.
6. The Commission was made aware that Vector used (and continues to use) two separate forms of contracts for the supply of the Services to its customers (both businesses and consumers):
  - 6.1 the CWA for complex connections<sup>1</sup>; and
  - 6.2 its standard terms and conditions (**Simple Connection T&Cs**) pre-printed on the back of its price quotes for simple connections<sup>2</sup>.
7. The form of contract that Vector used for the supply of the Services depended on the complexity of the Services involved, irrespective of whether the customers were consumers or businesses, or the contract values.
8. While the investigation primarily focused on the CWAs (and related templates), we also examined the Simple Connection T&Cs (and related templates) after we

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<sup>1</sup> Vector describes 'complex connections' as a single connection of over 3 phase 100 Amp (more common in industrial, commercial, large scale application that requires a higher capacity for larger loads for power output), where many connections are required (eg, property development of over 10 houses/units), a change to or a new transfer is required, the need to relocate a power pole more than 2 metres, or an easement is required.

<sup>2</sup> Vector describes 'simple connections' as the Services that only requires a quote, without the need for an easement, and can usually be completed in approximately 6 to 8 weeks.

identified possible unfair terms in the CWA templates and had concerns that those terms might also be reflected in the Simple Connection T&Cs.

### The law

9. The FT Act prohibits false, misleading, deceptive and unfair trade practices by businesses in the promotion and sale of goods and services. Since March 2015, the FT Act has contained UCT provisions that apply to standard form consumer contracts. These UCT provisions were extended to standard form small trade contracts entered into, renewed or varied from 16 August 2022.
10. A court may make a declaration that a contract term is unfair if:
  - 10.1 the term is in a consumer contract or a specified trade contract, which includes a small trade contract<sup>3</sup> - section 26C;
  - 10.2 the contract is a **standard form contract** - section 46J;<sup>4</sup>
  - 10.3 the term is not excluded from UCT review under section 46K(1). A term will be excluded if it:
    - 10.3.1 defines the main subject matter of the contract; or
    - 10.3.2 sets the upfront price payable<sup>5</sup> under the contract; or
    - 10.3.3 is a term required or expressly permitted by any enactment; and
  - 10.4 the **term is unfair** in that it would cause a significant imbalance in the parties' rights and obligations arising under the contract; is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and would cause detriment (whether financial or otherwise) to a party if it were applied, enforced, or relied on - section 46L.
11. Where a court has declared a term to be unfair under the UCT provisions, a person must not:<sup>6</sup>
  - 11.1 include such term in a standard form contract (unless it is included in a way that complies with the court decision); or

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<sup>3</sup> The contract will be a small trade contract under section 26C(2) if: each party to it is engaged in trade; it is not a consumer contract; and it does not comprise or form part of a trading relationship that exceeds the annual value threshold of \$250,000 when the relationship first arises.

<sup>4</sup> A court may determine a contract is in standard form under s 46J if it has not been subject to effective negotiation between the parties, considering such factors as the bargaining power of the parties, and whether the contract was pre-prepared by one party and presented on a take it or leave it basis.

<sup>5</sup> Section 46K(2) provides that upfront price means "...the consideration (including any consideration that is contingent upon the occurrence or non-occurrence of a particular event) payable under the contract, but only to the extent that the consideration is set out in a term that is transparent".

<sup>6</sup> Section 26A relates to UCTs in standard form consumer contracts. Section 26B relates to UCTs in standard form trade contracts.

- 11.2 apply, enforce, or rely on the UCT in the standard form contract.
12. Further information about the UCT provisions under the FT Act is set out in **Attachment A** of this letter. You can also view the FT Act and other legislation at <https://www.legislation.govt.nz/>.

### **The Commission's view**

13. During our investigation, we considered:
- 13.1 whether Vector's contracts used for the supply of the Services to its customers were:
- 13.1.1 standard form contracts pursuant to section 46J of the FT Act; and
- 13.1.2 consumer contracts and/or small trade contracts as defined in the FT Act; and if so
- 13.2 whether Vector's contracts contained terms that were likely to be unfair pursuant to section 46L of the FT Act.
14. The Commission is of the view that:
- 14.1 Vector used (and continues to use) standard form contracts, namely the CWAs and the Simple Connection T&Cs, for the supply of the Services to its business and consumer customers; and
- 14.2 Vector's standard form contracts contained terms that a court would likely consider unfair under section 46L of the FT Act, if the Commission applied to the court for a declaration under section 46I of the FT Act.
15. We have reached this view for the reasons set out in the sections below.

### *Vector's contracts for Services are likely to be standard form consumer and/or small trade contracts*

16. During the investigation, we obtained the following evidence that supported our view that Vector uses standard form contracts for the supply of the Services:
- 16.1 Vector advised that it uses standard term and condition templates in both its Simple Connection T&Cs and CWAs to supply the Services and its reasons for doing so, mainly to ensure efficiency and cost-effectiveness for both Vector and its customers where a large number of electricity connections are undertaken each year.
- 16.2 Vector would prepare contracts for the supply of the Services based on its Simple Connection T&Cs and CWA templates. These templates contained a section with key commercial terms that are specific to each contract (eg, price and scope of works) and a section on general terms and conditions that would be pre-prepared and standardised. Contracts pre-prepared on these templates would then be presented to Vector's customers for acceptance.

- 16.3 Vector confirmed it would not generally negotiate the general terms and conditions of the CWAs with its customers.
- 16.4 Of the examples of signed CWAs between Vector and its customers (all dated after 1 July 2020), nine out of ten of the CWAs (some of which were likely entered into with parties in trade) were below the annual value threshold of \$250,000 (including goods and services tax).
17. We consider that:
- 17.1 Any CWAs and Simple Connection T&Cs between Vector and its business customers, which were signed after 16 August 2022 and with a contract value below \$250,000 would likely be captured by the UCT regime of the FT Act as standard form small trade contracts.
- 17.2 Any CWAs and Simple Connection T&Cs between Vector and its consumer customers, which were signed since March 2015, would likely be captured by the UCT regime of the FT Act as standard form consumer contracts.

*Certain terms contained in Vector's contracts likely to be 'unfair' terms*

18. During the investigation, Vector provided copies of the contract templates on a voluntary basis, together with examples of signed CWAs between Vector and its customers (with customer details redacted) – see **Attachment B** for a list of the contract templates and the date ranges for when they were/are in use.
19. In forming the Commission's view on whether Vector's contracts contained potential unfair term/s, we reviewed Vector's CWA and Simple Connection T&Cs templates listed in Attachment B, with regard to the considerations set out in section 46L(1) and (2) of the FT Act and the following contextual factors:
- 19.1 Vector operates as a monopoly in the wider Auckland region, where its network runs. The corollary effect of this is that Vector's customers have no alternative and must contract with Vector for the supply of the Services (or at a minimum, for works on Vector's network, including equipment purchase for the connections). We believe this is a factor to consider when assessing whether a term would cause a significant imbalance in the parties' rights and obligations under the contract and/or whether it would cause detriment if enforced or relied on by Vector.
- 19.2 Vector noted that the terms in its contract templates were consistent with industry practice in construction and infrastructure works. We consider that what appears to be standard industry practice may still be considered 'unfair' under the UCT regime.
20. On review of Vector's contract templates, we identified several terms that we considered might be unfair under section 46L of the UCT regime. We invited Vector to provide feedback on those terms, providing detail of its legitimate interest in the terms, and any other information for our consideration.

21. After further assessment, we considered that Vector's version 7, 8 and 10 (25 October 2024) CWA templates contained terms that the court would likely declare unfair under the UCT regime of the FT Act. We note that these terms are also similarly reflected in the Simple Connection T&Cs and our same conclusion applies equally to those.

**Terms the Commission considers are likely to be unfair**

22. We set out in the sub-sections below a summary of the terms that we considered were likely to be unfair in the CWA templates (and also similarly reflected in various versions of the Simple Connection T&Cs) in that in our view, the terms were likely to create a significant imbalance in the rights and obligations of the parties, were not reasonably necessary to protect the legitimate interest of Vector, and would if relied on cause detriment (financial or otherwise) to Vector's customers.
23. Details of the impugned terms and our full analysis are set out in Attachment B, where we refer to the relevant version of the CWA template, the significant imbalance the terms would likely create, our assessment of Vector's legitimate interests, and the identification of detriments that might arise from the term if applied, enforced or relied on.

*Terms in versions 7 & 8 CWA templates (in use from October 2021 to 10 November 2024)*

Start date of works:

- 23.1 Customers were required to make upfront payment of the full contract value for the Services with no clear commitment from Vector for a start date for the works, other than a commitment to 'generally' schedule works within six weeks after conditions were met (eg, full payment made, consents obtained).
- 23.2 Aside from the uncertainty this creates, it would also be difficult for a party to sue for a breach of contract for delays where no defined start dates were provided in the contracts to allow for identification of the breach.
- 23.3 While Vector might have a legitimate interest in receiving a deposit upfront, this term created a significant imbalance when considering the context of the contracts overall and the allocation of risks between the parties, including Vector's exclusion of liability for its delay, described below.

No liability for Vector's delay on the supply of Services:

- 23.4 Vector excluded its liability to customers for any delays in commencing or completing the Services. This meant customers would have no meaningful redress for possible delays, even for reasons within Vector's control.
- 23.5 Vector pointed to a right for customers to terminate the contracts as a sufficient counterbalancing term. We disagreed that termination could be a realistic counterbalancing term when Vector operated as a monopoly in the supply of the Services for the wider Auckland region, ie, there would be no alternative suppliers for the Services.

Unilateral variation rights:

- 23.6 Vector might unilaterally vary any aspect of the CWAs (including price) and terminate the CWAs, if customers did not agree or respond to Vector's variation requests. The variation process did not require Vector to act in good faith, act reasonably or to engage with customers about the variations to reach consensus.
- 23.7 The right to vary the contract was broad and at Vector's discretion, where it considered a variation was 'needed'. We consider this to be similar to the example of a UCT in section 46M(d) of the FT Act and that the broad drafting created a significant imbalance in favour of Vector, where clear counterbalancing protections for customers were lacking.
- 23.8 Vector noted that it had implemented appropriate processes to engage with customers and assured us that certain terms (including this term) were rarely relied on. While this might be of some benefit to customers in practice, it is the parties' underlying rights and obligations set out within the terms of the contracts that matter. Processes outside of the contracts were ultimately at the discretion of Vector and could not negate possible unfairness concerns in the underlying contractual terms.

Limitation and exclusion of liability:

- 23.9 Vector's liability was limited to direct, physical loss or damage to a capped amount with various exclusions in place. Customers had unlimited liability for the full amount of all claims, losses and damages of any kind and further provided full uncapped indemnities to Vector that could at times cover the actions of third parties, over whom the customers might have no legal responsibility.
- 23.10 In the case of the Services provided, we considered the risks borne by each party and the extent to which each party had control over those risks. We believe it would be possible that each party could through its breach of contract or negligence cause considerable loss to the other party's property, but the terms only operated to limit the liability for Vector and not for the customers.
- 23.11 Accordingly, we considered these liability terms to be significantly imbalanced.

Contracting out of the FT Act (for customers in trade):

- 23.12 Vector sought to contract out of key provisions of the FT Act with its business customers, namely sections 9, 12A, 13 and 14(1).
- 23.13 While the FT Act permits contracting out of the FT Act between parties in trade, it must be fair and reasonable to do so.

- 23.14 We do not think it would be reasonable to contract out of the FT Act in the context of a standard form contract where there is an inherent power imbalance between the parties and no ability for customers to negotiate terms.
- 23.15 Vector considered it had legitimate interests in the term, namely that it did not want to become involved in FT Act claims, did not think such claims would materially assist customers' position and that permitting such actions/claims would increase the risk for Vector that would impact the pricing for the Services offered to customers. We do not consider these to be legitimate interests, and Vector had not provided any further justification or evidence on how taking on those risks might affect the pricing of the Services.

Recovery of costs by Vector on termination:

- 23.16 Where a contract was terminated by either party, Vector might invoice the customers for additional costs incurred in the performance of the contract that were not met by the upfront payment made by customers, plus Vector could remove any equipment installed at customers' properties (and paid for as part of the upfront payment) and could further charge the customers for the removal costs.
- 23.17 While Vector has a legitimate interest in receiving payment for the Services provided should customers elect to cancel for convenience, this termination term was worded so broadly that it would apply even if customers terminated due to Vector's breach of contract or if customers did not agree/respond to a variation request by Vector.
- 23.18 We consider this might give rise to a significant imbalance in the parties' rights and obligations because customers would be exposed to additional financial detriment in the form of unknown further costs payable, would receive no refunds for the money in full already paid for the equipment or the Services, and would further receive no benefit for the equipment installed (which could potentially be removed by Vector) and might potentially re-deployed elsewhere.

*Terms in version 10, 25 October 2024, CWA template (in use from 11 November 2024 to present)*

Limitation and exclusion of liability:

- 23.19 Vector updated its CWA template so that some exclusions of liability were now mutual; but the cap on Vector's liability remained the same. Vector proposed a 'cap' on customers' liabilities to the amount of the loss caused (which was a misnomer in that it restates uncapped liability under general contract law). Customers were still required to provide the uncapped indemnities for certain third party claims against Vector and this was not reciprocated by Vector.

23.20 We continued to hold the view that these liability terms were significantly imbalanced.

Entire agreement and no reliance on the other party:

23.21 Vector removed specific reference to contracting out of the FT Act and instead inserted an entire agreement term and a ‘no reliance on the other party’ term that in practice would have the same effect as a term contracting out of the FT Act. For example, the term maintains that *‘no party has relied on any representations, warranties, or information by or on behalf of any other party’*.

23.22 Our prior concern that this term would likely create a significant imbalance remained in that:

23.22.1 the revised term would mean customers cannot rely on any information or representations provided by Vector in circumstances where customers rely on Vector’s expertise. It would for example limit Vector’s responsibility for the design works carried out (that were paid for by the customers, formed the basis of the scope of the Services and where Vector would be privy to special knowledge and expertise around electricity connections to its network and capacity load); and

23.22.2 the revised term could serve to exclude evidence that customers could adduce in court proceedings on any disputes.

**The Commission’s decision to issue a published compliance advice letter**

24. In coming to the decision to issue a published compliance advice letter, we note that during the investigation:

24.1 Vector voluntarily made changes to the impugned terms we identified in version 7 & 8 CWA templates and implemented version 10 (25 October 2024) from 11 November 2024. We continued to have concerns about two of those terms.<sup>7</sup>

24.2 Vector later voluntarily made further changes to the two remaining impugned terms in its CWA template to address our concerns. This resulted in the version 10 (10 March 2025) CWA template, which we understand is in the process of implementation.

24.3 Vector further agreed to:

24.3.1 reflect similar changes in the version 10 (10 March 2025) CWA template to its Simple Connection T&Cs template; and

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<sup>7</sup> See paragraphs 0 and 0 and in Attachment C - The Commission’s Unfair Contract Terms Analysis Table on Impugned Terms in CWA templates

24.3.2 apply the amended terms in the version 10 (10 March 2025) CWA template to any existing CWA and Simple Connection T&Cs that remain on foot, meaning customers who currently have live contracts with Vector will receive the benefit of the fairer terms.

25. As a result of the actions that Vector has taken or committed to take (as set out in paragraph 24) and considering all the available information, the Commission has decided to:
- 25.1 issue a compliance advice letter to Vector, rather than seek a court declaration for UCTs in Vector's contracts, pursuant to section 46H of the FT Act; and
  - 25.2 publish the compliance advice letter to educate other businesses in the electricity distribution industry (or utilities distribution industries in general) over the types of terms that the Commission considers may be UCTs under the FT Act. We expect that this information will be of use for other businesses and their advisors to consider when reviewing their standard form contracts for compliance with the UCT regime under the FT Act.
26. The Commission reiterates that only a court can determine whether a term in a standard form consumer contract or a standard form small trade contract is unfair under the UCT regime and impose penalties where it finds that a declared UCT has been applied, enforced, or relied on in a standard form contract in breach of the law.
27. Further detail on our approach to making enforcement decisions, and the Commission's publication approach is contained in the Commission's 'Enforcement Response Guidelines', available on the Commission's website ([www.comcom.govt.nz](http://www.comcom.govt.nz)).

### **Publication**

28. This compliance advice letter will be published on the case register on the Commission website. The Commission may decide to redact some details from the published version, such as personal information.
29. The Commission may make public comment about our investigation and conclusion.

### **Further information**

30. Please note that this letter is not legal advice. Vector should obtain further information or guidance about the matters raised in this letter from a lawyer, if it wishes to do so.
31. We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce, including the 'Unfair Contract Terms Guidelines' that applies to standard form consumer and small trade contracts. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz).

32. Thank you for your assistance with this investigation. Please contact me on [REDACTED] or by email at [REDACTED], if you have any questions in relation to this letter.

Yours sincerely

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Senior Investigator  
Fair Trading

## Attachment A – Key provisions relating to the UCT regime under the Fair Trading Act 1986

### 2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**consumer contract** means a contract,—

- (a) in the case of a contract relating to goods or services, between—
  - (i) at least 1 supplier supplying the goods or services in trade; and
  - (ii) at least 1 consumer; and
- (b) in the case of a contract relating to the sale or grant of an interest in land, between—
  - (i) at least 1 person disposing, in trade, of an interest in the land; and
  - (ii) at least 1 person acquiring an interest in the land for personal, domestic, or residential purposes

**standard form consumer contract** means a consumer contract that a court, in the course of proceedings for a declaration under [section 46I](#), and in accordance with [section 46J](#), determines is a standard form contract

**standard form trade contract** means a specified trade contract that a court, in the course of proceedings for a declaration under [section 46I](#), and in accordance with [section 46J](#), determines is a standard form contract

**trade** means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land

### 26A Unfair contract terms in standard form consumer contracts

- (1) If a court has declared, under [section 46I](#), that a term in a standard form consumer contract is an unfair contract term, a person must not—
  - (a) include the unfair contract term in a standard form contract (unless the term is included in a way that complies with the terms (if any) of the decision of the court); or
  - (b) apply, enforce, or rely on the unfair contract term in a standard form contract.
- (2) The prohibitions in subsection (1) do not apply to any contract entered into before this section comes into force; but if the contract is varied or renewed on or after this section comes into force, the contract must be treated as a new contract for the purposes of subsection (1).
- (3) However, in the case only of a contract of insurance (as defined in [section 7](#) of the Insurance (Prudential Supervision) Act 2010) entered into before this section comes into force, the prohibitions in subsection (1) do not apply to—
  - (a) the contract; or
  - (b) any variation of the contract; or
  - (c) any new contract that has the effect of operating as a renewal of the contract, and any subsequent renewal.

### 26B Unfair contract terms in standard form trade contracts

If a court has declared, under [section 46I](#), that a term in a standard form trade contract is an unfair contract term, a person must not—

- (a) include the unfair contract term in a standard form contract (unless the term is included in a way that complies with the terms (if any) of the decision of the court); or
- (b) apply, enforce, or rely on the unfair contract term in a standard form contract.

## 26C Definition of specified trade contract

- (1) In this Act, unless the context otherwise requires, a contract is a **specified trade contract** if subsection (2) or (3) applies to the contract.
- (2) This subsection applies to a contract (a **small trade contract**) if—
  - (a) each party to it is engaged in trade; and
  - (b) it is not a consumer contract; and
  - (c) it does not comprise or form part of a trading relationship that exceeds the annual value threshold when the relationship first arises.
- (3) This subsection applies to a contract (a **grocery supply contract**) if—
  - (a) each party to it is engaged in trade; and
  - (b) it is not a consumer contract; and
  - (c) it is a contract between—
    - (i) at least 1 regulated grocery retailer (within the meaning of [Part 2](#) of the Grocery Industry Competition Act 2023); and
    - (ii) at least 1 supplier; and
  - (d) it relates to the acquisition of goods in respect of which the end-user is a consumer; and
  - (e) it does not comprise or form part of a trading relationship that exceeds the annual value threshold when the relationship first arises.
- (4) If a party to a proceeding alleges that a contract is a specified trade contract, the contract is presumed to be a specified trade contract unless any other party to the proceeding proves otherwise.
- (5) This section is subject to [section 26E](#).

## 26D Specified trade contracts: trading relationship, annual value threshold, and other definitions

- (1) This section applies for the purposes of [section 26C](#).
- (2) **Trading relationship**, in relation to a contract, means a relationship consisting of—
  - (a) that contract; and
  - (b) any other contract (whether current or prospective) between the same parties on the same or substantially similar terms.
- (3) A trading relationship—
  - (a) **first arises** when the first or only contract of the relationship is entered into; and
  - (b) **exceeds an annual value threshold when the relationship first arises**, in relation to the specified amount, if, at that time,—
    - (i) it includes a transparent term or transparent terms providing for consideration (including GST, if applicable) of at least the specified amount to be paid under it, in relation to any annual period, for the goods, services, or interest in land concerned; or
    - (ii) consideration (including GST, if applicable) of at least the specified amount is more likely than not to become payable under the relationship, in relation to any annual period, for the goods, services, or interest in land concerned.
- (4) In this section,—
  - (a) the following must be disregarded when determining whether contracts are on the same or substantially similar terms:
    - (i) the main subject matter of the contracts; and
    - (ii) any upfront price (within the meaning of [section 46K\(2\)](#)) payable under the contracts; and
  - (b) **annual period**, in relation to a trading relationship, means a period—
    - (i) beginning with the date on which the relationship first arises or an anniversary of that date; and
    - (ii) ending 12 months later; and
  - (c) **GST** means goods and services tax payable under the [Goods and Services Tax Act 1985](#); and
  - (d) **specified amount**,—
    - (i) in relation to a small trade contract, means \$250,000; and
    - (ii) in relation to a grocery supply contract, means \$1 million.

#### **46H Application for declaration of unfair contract term**

- (1) The Commission may apply to the High Court or the District Court (at the choice of the Commission) for a declaration under [section 46I](#) that a term in a standard form consumer contract or standard form trade contract is an unfair contract term.
- (2) Any person may ask the Commission to apply to a court for a declaration under [section 46I](#) in relation to a contract to which the person is a party.
- (3) Any person may apply to the High Court or the District Court (at their choice) for a declaration under [section 46I](#) that a term in a grocery supply contract that is a standard form trade contract is an unfair contract term.

#### **46I Declaration of unfair contract terms**

- (1) The High Court or the District Court may,—
  - (a) on application by the Commission, declare that a term in a standard form consumer contract or standard form trade contract is an unfair contract term; or
  - (b) on application by any person, declare that a term in a grocery supply contract that is a standard form trade contract is an unfair contract term.
- (2) The court may make the declaration only if it is satisfied that—
  - (a) the term is in a contract that is a consumer contract or specified trade contract; and
  - (b) the consumer contract or specified trade contract is a standard form contract (as determined in accordance with [section 46J](#)); and
  - (c) the declaration is not prohibited by [section 46K\(1\)](#); and
  - (d) the term is unfair in the sense described in [section 46L](#).
- (3) A declaration under this section—
  - (a) must identify the contract to which it applies by reference to at least 1 of the parties to the contract; and
  - (b) may describe the context or conditions in which the term's inclusion in a standard form contract means that the term is an unfair contract term.

#### **46J Standard form contracts**

- (1) A court may determine that any contract in which the terms (other than terms referred to in [section 46K](#)) have not been subject to effective negotiation between the parties is a standard form contract.
- (2) In determining whether a contract is a standard form contract, the court must (without limitation) take into account the following:
  - (a) whether one of the parties has all or most of the bargaining power relating to the transaction;
  - (b) whether the contract was prepared by one or more parties before any discussion relating to the transaction occurred with the other party or parties;
  - (c) whether 1 or more of the parties was, in effect, required either to accept or reject the terms of the contract (other than terms referred to in [section 46K](#)) in the form in which they were presented;
  - (d) the extent to which the parties had an effective opportunity to negotiate the terms (other than terms referred to in [section 46K](#)) of the contract;
  - (e) the extent to which the terms of the contract take into account the specific characteristics of any party to the contract.
- (3) If a party to a proceeding alleges that a contract is a standard form contract, the contract is presumed to be a standard form contract unless any other party to the proceedings proves otherwise.

#### **46K Terms that may not be declared to be unfair contract terms**

- (1) A court may not declare a term in a standard form consumer contract or standard form trade contract to be an unfair contract term to the extent that the term—
  - (a) defines the main subject matter of the contract; or
  - (b) sets the upfront price payable under the contract; or
  - (c) is a term required or expressly permitted by any enactment.
- (2) In this section, **upfront price** means the consideration (including any consideration that is contingent upon the occurrence or non-occurrence of a particular event) payable under the contract, but only to the extent that the consideration is set out in a term that is transparent.

**46L When term in consumer contract or specified trade contract is unfair**

- (1) A term in a consumer contract or specified trade contract is unfair if the court is satisfied that the term—
  - (a) would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
  - (b) is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
  - (c) would cause detriment (whether financial or otherwise) to a party if it were applied, enforced, or relied on.
- (2) In determining whether a term of a consumer contract or specified trade contract is unfair, the court may take into account any matters it thinks relevant, but must take into account—
  - (a) the extent to which the term is transparent; and
  - (b) the contract as a whole.
- (3) For the purpose of subsection (1)(b), a term in a consumer contract or specified trade contract must be presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.
- (4) For the purpose of subsection (1)(b), and despite anything in [section 46M](#), in relation to contracts of insurance only, the following terms must be taken to be terms that are reasonably necessary in order to protect the legitimate interests of the insurer:
  - (a) a term that identifies the uncertain event or that otherwise specifies the subject matter insured or the risk insured against;
  - (b) a term that specifies the sum or sums insured or assured;
  - (c) a term that excludes or limits the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances;
  - (d) a term that describes the basis on which claims may be settled or that specifies any contributory sum due from, or amount to be borne by, an insured in the event of a claim under the contract of insurance;
  - (e) a term that provides for the payment of the premium;
  - (f) a term relating to the duty of utmost good faith that applies to parties to a contract of insurance;
  - (g) a term specifying requirements for disclosure, or relating to the effect of non-disclosure or misrepresentation, by the insured.
- (5) In subsection (4),—
 

**contract of insurance** has the meaning given in [section 7](#) of the Insurance (Prudential Supervision) Act 2010

**premium** has the meaning given in [section 6](#) of the Insurance (Prudential Supervision) Act 2010

**uncertain event** has the meaning given in [section 7](#) of the Insurance (Prudential Supervision) Act 2010.

#### 46M Examples of unfair contract terms

Without limiting [section 46I](#), the following are examples of the kind of terms that, if in a consumer contract or specified trade contract, may be unfair contract terms:

- (a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract:
- (b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract:
- (c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract:
- (d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract:
- (e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract:
- (f) a term that permits, or has the effect of permitting, one party to vary the upfront price (as defined in [section 46K\(2\)](#)) payable under the contract without the right of another party to terminate the contract:
- (g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract:
- (h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether a contract has been breached or to interpret its meaning:
- (i) a term that limits, or has the effect of limiting, one party's vicarious liability for its agents:
- (j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party's consent:
- (k) a term that limits, or has the effect of limiting, one party's right to sue another party:
- (l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract:
- (m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract.

## Attachment B – List of contract templates used by Vector

| Form of Contract       | Version                      | Date range in use   |
|------------------------|------------------------------|---|
| CWA                    | Ver 5                        | From Mar 2019   |
| CWA                    | Ver 6                        | From Mar 2020   |
| CWA                    | Ver 6a                       | From Aug 2020   |
| CWA                    | Ver 7                        | From Oct 2021   |
| CWA                    | Ver 8                        | From Jan 2023   |
| CWA                    | Ver 10 (25 Oct 2024)         | From 11 Nov 2024  |
| CWA                    | Ver 10 (3 Mar 2025)          | To be used from 3 March 2025 (but not clear if implemented)                   |
| CWA                    | Ver 10 (10 Mar 2025)         | To be implemented   |
| Simple Connection T&Cs | #1 Standard quote letter     | From Jan 2021 to Jan 2023   |
| Simple Connection T&Cs | #2 Standard quote letter     | From Jan 2023 to Nov 2023   |
| Simple Connection T&Cs | #3 Non-standard quote letter | From Jan 2021 (non-standard quote);<br>From Dec 2023 (all simple connections) |
| Simple Connection T&Cs | #4 Non-standard quote letter | To be implemented   |

## Attachment C - The Commission’s Unfair Contract Terms Analysis Table on Impugned Terms in CWA templates

| CWA version <sup>8</sup> and term reference | Wording of the Term  | Vector’s response including legitimate interest arguments  | Commission’s View  |
|---|--|--|--|
| Ver 7, 8<br><br>Start Date of Works         | <p>Specific Terms, "Start Date of Works" -</p> <p><i>"The Works will generally be scheduled to start within six weeks following the satisfaction of the above conditions, provided that we have all necessary Consents."</i></p> <p>General Terms, clause 5(a) -</p> <p><i>"We will do everything reasonable to undertake and complete the Works in a timely manner. However, any indication or estimate of time provided to you is approximate only. We will not be liable to you for any failure to meet any estimated start or completion dates for the Works."</i></p> | <p>Vector needed flexibility to arrange start dates for the Services to commence due to:</p> <ul style="list-style-type: none"> <li>• variables in the electricity industry;</li> <li>• matters outside of its control (such as its reliance on third parties and equipment delivery); and</li> <li>• the large number of new connections Vector manages.</li> </ul> <p>Vector further added that clause 5(a) requires it to do everything reasonable to undertake and complete works in a timely manner; and customers had the right to</p> | <p>While Vector may require a “six week” timeframe to arrange commencement of the Services in certain circumstances, we consider this term could create a significant imbalance in the context of the contract as a whole, because:</p> <ul style="list-style-type: none"> <li>• The non-precise drafting of the “Start Date of Works”, by the use of “<i>generally</i>”, has meant it would be near impossible for customers to prove a breach of contract in relation to the timing for the Services. We consider this to be parallel to a term that has the effect of limiting one party’s right to sue another party - see s46M(k) of the FT Act.</li> <li>• Vector did not accept any liability at all for delays under clause 5(a), including for matters within its control. This would mean customers would be unlikely to get any redress if Vector failed to “<i>do everything reasonable to undertake and complete the Works in a timely manner</i>” We also considered that the breadth of the term</li> </ul> |

<sup>8</sup> Based on information provided by Vector, version 7 of the CWA template is likely to have been in use from around October 2021; version 8 of the CWA template is likely to have been in use from around January 2023.

| CWA version <sup>8</sup> and term reference | Wording of the Term | Vector's response including legitimate interest arguments                   | Commission's View   |
|---|---------------------|---|---|
|   |                     | <p>terminate the CWA for convenience under clause 12(b)(i)<sup>9</sup>.</p> | <p>likely extended beyond Vector's legitimate interest in protecting itself against events outside of its control.</p> <ul style="list-style-type: none"> <li>• Customers must make upfront payment in full. Vector would have the benefit of the full contract value upfront, while customers would bear the financial burden of upfront payment with no meaningful right of redress for on-going delay.</li> <li>• The "Start Date of Works" term would also give no consideration to variables that customers would need to manage and costs that might be incurred for changes to/delays on commencement of Vector's works that would be within Vector's control.</li> <li>• Customers' right to terminate for convenience under clause 12(b)(i) was not a realistic counterbalancing term when there was no available alternative supplier that customers could use for the Services.</li> </ul> |

<sup>9</sup> Clause 12(b)(i) states that "You may terminate this agreement: (i) by providing us with 20 Working Days' written notice; ...".

| CWA version <sup>8</sup> and term reference | Wording of the Term   | Vector's response including legitimate interest arguments   | Commission's View  |
|---|---|---|--|
|   |   |   | <ul style="list-style-type: none"> <li>Overall, we considered that the terms create an imbalance in the parties' rights and obligations, were not reasonably necessary to protect Vector's interests, and could cause detriment to customers.</li> </ul>   |
| <p>Ver 7, 8</p> <p>Unilateral Variation</p> | <p>General Terms, clause 4 (a) and (d) -</p> <p><i>"(a) If at any time we consider that a Variation is needed we will provide you with a Variation request setting out the scope of the Variation, including any Additional Charges"</i></p> <p><i>"(d) If you do not agree to the Variation, or do not respond to the Variation request, ... then we may not be able to complete the Works. We may, at our election, terminate the agreement in accordance with clause 12 and be relieved of our obligation to perform the Works."</i></p> | <p>Vector had a legitimate interest in ensuring it could undertake variations which were genuinely necessary to ensure effective and safe delivery of the Services, but in practice would only rely on these provisions in limited circumstances.</p> | <p>We consider Vector was likely to have a legitimate interest in some form of variation right to enable it to complete the Services if unexpected circumstances arose.</p> <p>However, we consider the term as drafted creates a significant imbalance, and extends beyond what was reasonably necessary to protect Vector's legitimate interest, and cause detriment to customers as:</p> <ul style="list-style-type: none"> <li>The right to vary was absolute and unlimited. It would allow Vector to make variation requests in its absolute discretion <u>outside</u> of what was genuinely and reasonably necessary to undertake connection works.</li> <li>There was no stated requirement for Vector to act in good faith, act reasonably or engage in discussions with customers about the variations. In contrast, there were counter obligations on</li> </ul> |

| CWA version <sup>8</sup> and term reference           | Wording of the Term  | Vector's response including legitimate interest arguments  | Commission's View  |
|---|--|--|--|
|   |  |  | <p>customers to consider variations in good faith and to act reasonably.</p> <ul style="list-style-type: none"> <li>• Vector's ability to terminate the CWA where customers did not agree or respond to variations could cause a significant imbalance in the parties' rights and obligations, particularly in circumstances where there was no alternative supplier that customers could use to complete the same works.</li> <li>• Customers would face detriment in the form of uncertainty of the terms of their CWAs.</li> </ul>                    |
| <p>Ver 7, 8</p> <p>Vector's Liability to Customer</p> | <p>General Terms, clause 7</p> <p><i>"(a) We are only liable to you for physical loss or damage that is directly caused by our negligence or our breach of this agreement. Our maximum liability to you for any single event or series of related events is \$50,000, and in aggregate for all events will not exceed \$250,000.</i></p> <p><i>(b) Despite any other term of this agreement and to the extent permitted by law, we will not be liable to you, under or in relation to this agreement, for: (i) any loss of profit, loss of revenue, loss of use,</i></p> | <p>Vector explained that limitation of liability clauses were not unusual in the industry, and in standard form contracts, and that it would likely increase the price for customers if Vector's risk exposure was not limited.</p> <p>Vector also claimed that it provided options to customers for contracting with Vector for certain components of the Services, eg, civil works might</p> | <p>We acknowledge that open ended liability is unlikely to be commercially appropriate or realistic. However, we consider that the liability terms between the parties caused a significant imbalance because:</p> <ul style="list-style-type: none"> <li>• Vector limited its liability to direct physical loss up to \$50,000 per event whereas customers had uncapped liability and were required to indemnify Vector for the full amount of claims, damages and costs relating to damage to Vector's property under clause 8 below. Under</li> </ul> |

| CWA version <sup>8</sup> and term reference | Wording of the Term  | Vector's response including legitimate interest arguments            | Commission's View  |
|---|--|--|--|
|   | <p><i>loss of contract or loss of goodwill (in each case whether direct or indirect); and (ii) any indirect or consequential loss.</i></p> <p>(c) <i>We will not be liable to you for any delay in performing or failure to perform our obligations in this Agreement to the extent that such failure was caused by an event beyond the reasonable control of us or our subcontractors (such as an act of God, war, epidemic, national emergency, requirement of any government or local government or regulatory authority, natural disaster, sabotage or act of terrorism)."</i></p> | <p>be contracted directly with Vector's approved subcontractors.</p> | <p>clause 6 (f), customers were also responsible for third parties, where the customers 'permitted' any other person to damage Vector's property. This was regardless of whether customers have legal responsibility for that third party.</p> <ul style="list-style-type: none"> <li>• The liability provisions were unbalanced in favour of Vector, in circumstances where both parties would be exposed to damage caused by the other; and customers could face detriment in the form of significant losses caused by Vector.</li> <li>• Customers might cause damage to Vector's equipment or network on site (such as damage to transformers or cables) and Vector might cause damage such as fire to the customers' site and premises. More seriously, the commissioning and livening of the supply would occur in the later stages once the buildings would likely be completed. If there were issues with the connections through the negligence of Vector in performing the Services, that could result in fire and could cause significant damage to the customers' property.</li> </ul> |

| CWA version <sup>8</sup> and term reference    | Wording of the Term   | Vector's response including legitimate interest arguments   | Commission's View  |
|--|---|---|--|
|  |   |   | <ul style="list-style-type: none"> <li>• While customers might be given the option to contract with Vector's nominated sub-contractors for civil works, there were no alternative options available to customers to obtain core electricity connection services from another party.</li> <li>• We consider the term was likely to create an imbalance in the parties' rights and obligations, was not reasonably necessary to protect Vector's interests, and could cause detriment to customers.</li> </ul>   |
| Ver 7, 8<br><br>Customer's Liability to Vector | <p>General Terms, clause 8 –</p> <p><i>"(a) You indemnify us against the full amount of all claims, losses, damages, and reasonable expenses and costs that we incur in relation to any:</i></p> <p><i>(i) breach of clause 6(f) or</i></p> <p><i>(ii) claim by any third party in relation to this agreement, to the extent that such claim arises from or could not have been made but for your negligence or any breach of this agreement by you.</i></p> <p><i>(b) We agree to take all reasonable steps to mitigate any losses we may suffer or incur arising out of anything done, or not</i></p> | <p>Vector claimed that it would be appropriate for customers to bear the risk of damage to Vector's equipment, because:</p> <ul style="list-style-type: none"> <li>• Customers had total control over their sites where Vector would undertake the Services and therefore would be best placed to manage risk of damage to Vector's connection equipment by ensuring their</li> </ul> | <p>We consider this term could cause a significant imbalance in the parties' rights and obligations particularly when considered in comparison with Vector's liability above.</p> <ul style="list-style-type: none"> <li>• It would in certain circumstances hold customers responsible for damage caused by "any person", at an uncapped amount, even if they had no legal responsibility over that person.</li> <li>• It was incongruous for Vector to expect customers to avoid the risk of damaging Vector's equipment by obtaining indemnities from third parties (and</li> </ul> |

| CWA version <sup>8</sup> and term reference | Wording of the Term  | Vector's response including legitimate interest arguments   | Commission's View  |
|---|--|---|--|
|   | <p><i>done, under or in connection with this agreement."</i></p> | <p>safety while on site, obtaining indemnities from third parties on their site (eg, contractors, or through insurance.</p> <ul style="list-style-type: none"> <li>• Customers could assess responsibilities and risks and decide whether to engage Vector for non-regulated works or use other contractors.</li> <li>• Vector was not well placed to assess customer and site-specific risks and to tailor the CWAs to those risks (including through the contract value), given the scale of its connection services offering and its broad access offering.</li> </ul> | <p>contractors) on its site, when Vector (as a third party on site) was not prepared to offer these itself.</p> <ul style="list-style-type: none"> <li>• Similar to the limitation of liability term above, there would be no alternative options available to customers to obtain core electricity connection services from another party.</li> </ul> <p>Overall, we considered that the term creates an imbalance in the parties' rights and obligations, were not reasonably necessary to protect Vector's interests, and could cause detriment to customers.</p> |

| CWA version <sup>8</sup> and term reference   | Wording of the Term  | Vector's response including legitimate interest arguments   | Commission's View   |
|---|--|---|---|
| Ver 7, 8<br><br>Contracting out of the FT Act | <p>General Terms, clause 9(b)(ii) –</p> <p><i>"If you are receiving the Works for the purposes of a business then, to the extent permitted by law, you agree:</i></p> <p><i>(i) that the provisions of the Consumer Guarantees Act 1993 shall not apply in relation to the Works; and</i></p> <p><i>(ii) that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the obligations of the parties under this agreement,</i></p> <p><i>and that it is fair and reasonable that such provisions are contracted out of for the purposes of this agreement."</i></p> | <p>Vector maintained that it had a legitimate interest in the term, as while it did not consider it would engaged in misleading or deceptive conduct, Vector did not wish to become involved in FT Act claims and did not think these claims would materially assist customers' position, as permitting such actions would then need to be priced into the contract value offered to customers.</p> | <p>While the FT Act permits contracting out of the FT Act between parties in trade, it must be fair and reasonable to do so.<sup>10</sup></p> <p>When considering what is fair and reasonable, the court must take into account the circumstances of the contract, including the bargaining power of the parties, the extent to which the party was able to negotiate the terms, and whether a party was required to accept or reject the agreement on the terms and conditions presented by the other party.<sup>11</sup> These considerations parallel the features of a standard form contract.</p> <p>We do not think it is reasonable to contract out of the FT Act in the context of a standard form contract where there is an inherent power imbalance between the parties (bearing in mind Vector has a monopoly position in the wider Auckland region) and no ability for customers to negotiate terms.</p> |

<sup>10</sup> Section 5D(3) permits contracting out of the FT Act between parties in trade where it is fair and reasonable for the parties to be bound by the provision in the agreement.

<sup>11</sup> Section 5D(4)(c).

| CWA version <sup>8</sup> and term reference | Wording of the Term  | Vector's response including legitimate interest arguments  | Commission's View  |
|---|--|--|--|
|   |  |  | <p>While an unwillingness to defend claims may be an interest of Vector's, we do not consider this to be a legitimate interest of Vector.</p> <p>Vector has offered no evidence in support of the contention that it would face significant expenses in dealing with FT Act claims that would necessitate raising its prices for the Services provided to customers.</p> <p>In our view, this type of term creates a significant imbalance in the rights and obligations of the parties, is not reasonably necessary to protect the legitimate interests of Vector and likely to be cause detriment to customers if the term is enforced or relied on.</p> |
| Ver 7, 8<br>Termination                     | <p>General Terms, clause 12(c) –</p> <p><i>"If either party terminates this agreement before we complete the Works:</i></p> <p><i>(i) we will act promptly to mitigate any costs that have already been incurred;</i></p> <p><i>(ii) we will be entitled to issue a Tax Invoice to recover from you any costs that we have incurred in performance of this agreement that are not met by the Contribution, including the cost of any</i></p> | <p>No specific reasons were provided by Vector, other than noting that this term would provide an appropriate balance between the parties' rights, in the event that either party terminated before Vector completed the Services.</p> | <p>Vector [REDACTED] provided that <i>"customers will receive the benefit of works already undertaken or equipment purchased and installed"</i>. Vector's response contradicted with the wording for this term, where on termination of the CWA, Vector would be entitled to remove the equipment at the customers' cost and there was no provision for a refund of the equipment cost to customers (already paid as part of the upfront payment before commencement of the Services).</p>   |

| CWA version <sup>8</sup> and term reference                           | Wording of the Term   | Vector's response including legitimate interest arguments   | Commission's View  |
|---|---|---|--|
|   | <p><i>Equipment ordered for the Works, and we will be entitled to remove (at your cost) any Equipment installed;</i></p> <p><i>(iii) to the extent that any Contribution paid by you (including any Additional Charges) is greater than the costs described in clause 12(c)(ii), we will issue a Credit Note for the difference."</i></p>   |   | <p>This term risks causing a significant imbalance in the parties' rights and obligations and in addition, financial detriment to customers if Vector could recover from customers <u>any</u> costs incurred that were not met by the contract value; and would be entitled to the full contract value whilst still retaining the equipment the customers paid for and might be put to use on Vector's other works (or other customers' projects requiring similar equipment).</p> <p>We consider the term as written was likely to go beyond what is reasonably necessary to protect Vector's legitimate interests under the contracts.</p> |
| <p>Ver 10 (25 October 2024)</p> <p>Vector's Liability to Customer</p> | <p>General Terms, clause 7 –</p> <p><i>"(a) We are only liable to you for physical loss or damage and which is directly caused by our negligence or our breach of this agreement.</i></p> <p><i>(b) Despite any other term of this agreement and to the extent permitted by law, we will not be liable to you, under or in relation to this agreement, for: (i) any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill (in each</i></p> | <p>No response was provided by Vector for this change, except that the change was intended to address the Commission's concerns raised to earlier versions of the CWA on the same term.</p> | <p>We consider the changes made did not address our concerns with the substance of the term.</p> <p>Vector's liability remained limited to the same amounts, and customers' liability remained effectively uncapped (see below for further details). We remain of the view that this was likely to create an imbalance in the parties' rights and obligations; and was not reasonably necessary to protect Vector's interests and could cause detriment to customers.</p>  |

| CWA version <sup>8</sup> and term reference                               | Wording of the Term  | Vector's response including legitimate interest arguments  | Commission's View  |
|---|--|--|--|
|   | <p><i>case whether direct or indirect); and (ii) any indirect or consequential loss.</i></p> <p><i>(c) Our maximum liability to you for any single event or series of related events is \$50,000, and in aggregate for all events will not exceed \$250,000.</i></p> <p><i>(d) You agree to take all reasonable steps to mitigate any losses you may suffer or incur arising out of anything done, or not done, under or in connection with this agreement.</i></p> <p><i>(e) We will maintain NZ\$5 million public liability insurance until completion of the Works or the termination of this agreement (whichever occurs first).</i></p> <p><i>(f) This clause 7 does not limit the operation of clause 12(c)(iii)."</i></p> |  |  |
| <p>Ver 10<br/>(25 October 2024)</p> <p>Customer's liability to Vector</p> | <p>General Terms, clause 8 –</p> <p><i>"(a) Subject to clauses 8(d) and (f), you are only liable to us for physical loss or damage that is directly caused by your negligence or your breach of this agreement.</i></p> <p><i>(b) Subject to clauses 8(d) and (f), but despite any other term of this agreement and to the extent permitted by law, you will not be liable to us, under or in relation to this</i></p>   | <p>No response was provided by Vector for this change, except that the change was intended to address the Commission's concern raised to earlier versions of the CWA on the same term.</p> | <p>Except for excluding customers' liability under sub-clause (b) for indirect, consequential losses etc. to make it mutual as between the parties, the remainder of the term was effectively the same term re-written in different language.</p> <p>Vector purportedly 'capped' customers' liability to the amount of the loss caused as opposed to a fixed monetary sum, which was effectively the</p> |

| CWA version <sup>8</sup> and term reference | Wording of the Term   | Vector's response including legitimate interest arguments | Commission's View   |
|---|---|---|---|
|   | <p><i>agreement, for: (i) any loss of profit, loss of revenue, loss of contract or loss of goodwill (in each case whether direct or indirect); and (ii) any indirect or consequential loss.</i></p> <p><i>(c) Subject to clauses 8(d) and (f), your maximum liability to us for any single event or series of related events is an amount equal to the amount of your Contribution or the cost of remediating the loss or damage caused by your negligence or breach, whichever is higher.</i></p> <p><i>(d) You indemnify us against the full amount of all claims, losses, damages, and reasonable expenses and costs that we incur in relation to any claim by any third party in relation to this agreement, to the extent that such claim arises from or could not have been made but for your negligence or any breach of this agreement by you.</i></p> <p><i>(e) We agree to take all reasonable steps to mitigate any losses we may suffer or incur arising out of anything done, or not done, under or in connection with this agreement.</i></p> <p><i>(f) Nothing in this clause 8 limits or excludes or has the effect of limiting or excluding any liability you have to us relating to any breach of your obligations in relation to</i></p> |   | <p>same as customers' uncapped liabilities under general contract law.</p> <p>In addition, customers must still give an uncapped indemnity to Vector for any third party claims that arose out of the customer's breach or negligence. This was not reciprocated.</p> <p>We consider this term created a significant imbalance between the parties that might cause detriment to customers. We consider it extends beyond what was reasonably necessary to protect Vector's legitimate interests.</p> |

| CWA version <sup>8</sup> and term reference                              | Wording of the Term   | Vector's response including legitimate interest arguments  | Commission's View   |
|--|---|--|---|
|  | <p><i>Easements and any consents or Deed of Covenant that may be required.</i></p> <p><i>(g) This clause 8 does not limit the operation of clause 12(c)(iii)."</i></p>  |  |   |
| <p>Ver 10<br/>(25 October 2024)</p> <p>Contracting out of the FT Act</p> | <p>General Terms, clause 9(b) –</p> <p><i>"If you are receiving the Works for the purposes of a business then, to the extent permitted by law, you and us agree:</i></p> <p><i>(i) that the provisions of the Consumer Guarantees Act 1993 shall not apply in relation to the Works;</i></p> <p><i>(ii) that we have each made our own independent assessment of, and have relied on our own enquiries, investigations, experience, skills and judgement in the entry into, and performance of this agreement, and in entering into the agreement no party has relied on any representations, warranties or information by or on behalf of any other party, save as recorded in this agreement; and</i></p> <p><i>(iii) that to the fullest extent permitted by law all terms, conditions, undertakings, inducements, warranties or representations, whether express or implied, statutory or otherwise, which are not expressly set out in this agreement /and which relate to or are connected with this agreement or the Works, are excluded."</i></p> | <p>No response was provided by Vector for this change, except that the change was intended to address the Commission's concern raised to earlier versions of the CWA on the same term.</p> | <p>We remain concerned about the updated term, because:</p> <ul style="list-style-type: none"> <li>• sub-clause (ii) placed the onus on customers to conduct its own investigations and not to rely on any of Vector's claims and representations. As Vector is the provider of complex, specialist services, and would have completed the design to determine the scope of the Services, and was in a monopoly position as the only party who could undertake the Services (at least the connection works), we consider such a term would create a significant imbalance when customers could not rely on what Vector said and is not reasonably necessary to protect Vector's legitimate interests and would likely cause detriment to customers if applied, enforced or relied on.</li> <li>• sub-clause (ii) and (iii) had the practical effect of contracting out of the FT Act. This would leave customers with no recourse against Vector outside of what would be in the CWA and would</li> </ul> |

| <b>CWA version<sup>8</sup> and term reference</b> | <b>Wording of the Term</b> | <b>Vector's response including legitimate interest arguments</b> | <b>Commission's View</b>  |
|---|----------------------------|--|---|
|   |                            |  | <p>operate similarly to example unfair term in section 46M(k), being a term that had the effect of limiting one party's right to sue another party.</p> <ul style="list-style-type: none"> <li>• We consider the re-written term still created a significant imbalance between the rights and obligations of the parties and was likely to cause detriment to the customers where they would be unable to seek recourse over representations made by Vector.</li> </ul> |