Draft Fibre Input Methodologies Determination

Cross-submission to Commerce Commission

PUBLIC VERSION

17 February 2020

SUMMARY

1. Vocus considers that the Commission would best achieve its statutory objectives and promote the long-term interests (benefit) of end-users with the following policy decisions:

   (i) **Chorus' claim that ICABS is not included in the regulated FFLAS service should be disregarded:** Chorus has continued to maintain its claim that ICABS is not part of the regulated FFLAS service. Vocus supports the Commission's determination[1] that ICABS fall within the scope of FFLAS. To leave services such as ICABS outside the regulatory framework and to the commercial whims of a monopoly wholesale provider would, in Vocus' opinion, have a detrimental impact on competition in downstream retail markets.

   (ii) **The Commission should provide details of how the Commission will assess whether Chorus' selection of proxies for cost allocation is appropriate:** If the Commission retains its position that the cost allocation rules should be non-prescriptive, then it should detail the basis on which it will determine whether the proxies Chorus has used are appropriate. The Commission should require Chorus to undertake, and disclose, analysis of the financial impact of different proxies (which they would invariably do for their own internal purposes, anyway).

   (iii) **The Commission should not provide an uplift for asset stranding risk or potential deregulation.**

   (iv) **The Commission should address double-recovery between copper and fibre to avoid or mitigate excess returns:** Vocus agrees with Spark that *"double recovery of costs results in excessive profits and is not supported by the Act"*.

   Complexity is not a sound argument for not addressing double-recovery between copper and fibre. Vocus and Spark (TERA) have both provided sufficient guidance for how this matter could be addressed.

   (v) **The Commission should define and calculate financial losses on an incremental or avoidable cost basis:** The Commission has not provided sound basis for adopting anything other than an incremental or avoidable cost approach to the determination of financial losses (if any). Chorus' own (repeated) arguments in support of OVABAA for financial separation purposes details that an avoidable cost approach is appropriate and sets the correct threshold for whether a service is economic or making a financial loss.

   (vi) **The Commission should retain a one-year risk-free rate to calculate financial losses:** The approach taken of using a one-year risk-free rate to calculate the net cost of the Kiwi Share Obligation under the original version of the Telecommunications Act provides relevant precedent for determining the WACC for calculation of financial losses (if any).

[1] Commerce Commission, Specified Points of Interconnect' paper, paragraph 38, 19 December 2019 and Fibre input methodologies: Draft decision – reasons paper, paragraphs 2.62 – 2.63.

(vii) **The Commission should set the WACC used to calculate financial losses at mid-point.** It is unambiguous that a retrospective application of a WACC uplift would result in higher prices with zero benefits for consumers. We were surprised Chorus (and Sapare) advocated use of 75th percentile, given this was criticised by the High Court in the Part 4 IMs Merit Appeal, and the Commission subsequently deemed it to be excessive. Chorus (and Sapare) appear to want the Commission to transpose errors previously made under the Part 4 Commerce Act setting to Part 6 Telecommunications Act.

(viii) **The Commission should re-confirm there is no reasonable basis or evidence to support an above mid-point WACC:** No evidence has been provided in support of an above mid-point WACC. Chorus and its consultant submissions have largely been based on rhetoric and assertions. The High Court IM Merit Appeal decision provided clear direction that absent actual evidence an uplift could not be justified.

The reference by Chorus and others to Part 4 WACC precedent is selective and doesn't provide a reasonable basis for an uplift. The Commission's decision to provide a WACC uplift for electricity and gas did not and does not create a *"reasonable expectation"* that an uplift would be applied in telecommunications or for fibre services. The submitters referring to this precedent ignore that airports weren't granted an uplift.

(ix) **The Commission should determine TAMRP at each PQR determination rather than setting it in the WACC IM:** The Commission should NOT prescribe the TAMRP value in the WACC IM (under either Part 4 Commerce Act or Part 6 Telecommunications Act).

(x) **The Commission should not round TAMRP to the nearest 0.5:** The Commission should NOT round the TAMRP value to the nearest 0.5. Rounding to 1 decimal point is sufficient to avoid a false sense of precision (under either Part 4 Commerce Act or Part 6 Telecommunications Act).

(xi) **The Commission should recognise overforecasting has been an issue under Part 4 Commerce Act and there is no reason to expect it won't be under Part 6 Telecommunications Act:** Chorus attempts to downplay the risk of over-forecasting, by claiming *"the risk of over-forecasting is mitigated in other ways [than through the Capex IM]. Overall, investment incentives through an appropriate cost of capital, and market drivers provide a strong incentive to deliver attractively-priced services at the quality consumers demand. The capex IM has a role in complementing and reinforcing these incentives in a BBM regime, and ensuring we take a suitably prudent, long-term view when planning and executing investment plans".* None of these points impact on the extent to which Chorus may have incentives and ability to overforecast.

(xii) **The Commission should determine that independent verification requirements should apply to all supplier and capex proposals:** Chorus'

attempt to water down the requirements to, for example, only apply to individual capex proposals above $10m should be disregarded.

(xiii) **The Commission should set a permissive Quality Dimensions IM to provide flexibility in terms of the service quality measures and targets that can be set for the seven dimensions the Commission has specified:** The Quality Dimensions IM should NOT act to limit the service quality measures and targets that the Commission can set under Information Disclosure and PQR, beyond the limits of the seven dimensions the Commission has identified.

(xiv) **The Commission should allow service quality measures and targets to be set where the regulated supplier have some control, but not necessarily complete control, over the quality outcomes:** Chorus' proposal that the Commission exclude service quality measures where Chorus has *"at least to some extent"* control over the quality outcomes could, if applied under Part 4, exclude service quality dimensions SAIDI and SAIFI measures for unplanned outages.

INTRODUCTION

2. Vocus welcomes the opportunity to cross-submit in relation to the Commerce Commission's Draft Fibre Input Methodologies Determination, issued on 11 December 2019, and related material.

3. We appreciate and acknowledge the extension the Commission has provided for cross-submissions. The extension has meant we have had a full 10 working days (factoring in both Auckland Anniversary and Waitangi Day) to respond to the other submissions.

4. If you would like any further information about the topics in our cross-submission, previous submissions or have any queries about this submission, please contact:

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ACTION NEEDED TO RESOLVE LAYER 1 UNBUNDLING

5. Vocus agrees with Vector that the Part 6 competition purpose is directly relevant to the matter of layer 1 unbundling:

> *"At a practical the requirement for Chorus and LFCs to provide unbundled network access services from 1 January 2020 is an example of decisions where the section 162 and 166 requirements are relevant."*

6. We also agree with Vector's concern Chorus and LFCs are currently being allowed to unbundle in a way that results in costs and service components not needed for layer 1 unbundling being included in the layer 1 price:

> *"Unbundled FFLAS services should only require access seekers to acquire the monopoly inputs necessary to provide a compelling service offering rather than forcing access seekers to consume additional inputs on inappropriate service terms. For example, the Commission's decision to defer the handover points for Layer 1 FFLAS services to be defined by Chorus and LFCs has he real risk of undermining workably competitive outcomes. This is because the new Layer 1 PONFAS (point-to-multi-point) service is being defined in a way where access seekers are required to purchase unnecessary inputs as part of the regulated service. We consider the Commission's decision to defer the specification of layer 1 handover points to Chorus and LFCs is in fact contrary to section 166."*

7. Vector's comments align with Vodafone's observation that *"under the current settings there is no prospect of commercial unbundling actually occurring at any scale, which is why we have asked the Commission to intervene to help ensure that this critical part of the regime can become a reality"*.

THE COMMISSION NEEDS TO ENSURE SCRUTINY OF CHORUS' CHOICE OF COST ALLOCATORS AND THEIR IMPACT

8. In our submission on the draft IMs determination we reiterated our concern that the Commission's proposed cost allocation rules are not sufficiently prescriptive and *"Chorus' incentives will be to select cost allocators/proxies which will help maximise its fibre service revenues/profits"*.

9. Our concerns are mirrored in the Spark submission e.g.:

> *"Regulated providers have incentives to maximise the allocation of costs to the regulated services, and to distort competition in both adjacent and downstream markets, and in future fibre markets …"*
>
> *"… the risk remains that regulated providers can act on incentives to push the costs of the legacy copper network and expansion into competitive markets onto fibre end users."*
>
> *"There are a range of plausible allocators and the proposed approach - on its own - leaves significant discretion with regulated providers. We should expect Chorus and LFCs in exercising any discretion to act on natural incentives to maximise regulated costs and distort competition in adjacent and downstream markets, and prevent future competition developing in fibre markets."*

10. These comments also mirror the incumbent electricity retailer submissions, in relation to cost allocation/related party transactions, made in response to the statutory review of the Part 4 IMs.

11. We support Spark's submission that *"The Commission may wish to clarify how the allocators will be approved in practice"* as part of the review and approval of cost allocators through the PQR process. We also support Spark's recommendations that the Commission require *"more detailed data and benchmarking key costs against other wholesale fibre providers and regulatory models"* and *"give itself the option to set allocation caps"*.

12. We also agree with and support 2degrees' view that Chorus should be required *"to undertake sensitivity analysis on the impact of different proxy allocators"*. For the avoidance of doubt, this should apply to both cost allocation for the determination of financial losses (if any) and financial separation purposes.

TAMRP SHOULD NOT BE HARD-WIRED IN THE WACC IM

13. Vocus agrees with BARNZ, ENA and Vector that the TAMRP value should be reset at the start of each regulatory period, just as the Commission recalculates the risk-free rate. The TAMRP value should not be 'hard-wired' in either the Part 4 or Part 6 WACC IMs.

14. We are sympathetic to ENA's view that *"… there needs to be consideration whether this WACC element is hard coded as a numeric value in the IM or is a value to be updated each time WACC is reset"*.

15. Vector has pointed out that the method used to derive the TAMRP demonstrates it is a variable and not a fixed parameter. What we take from Vector's submissions on this matter is that:

    (i) If 7.5% is the 'right' answer for Chorus' WACC then the 7.0% used in the 2020-25 EDB DPP and Transpower IPP determinations is already out-of-date, even though the regulatory period is yet to commence;[2] and

    (ii) TAMRP is inversely related to the risk-free rate. This means that if the Commission locks in a TAMRP, calculated when the risk-free rate is at a historic low, the TAMRP will be excessive once the risk-free rate starts to increase again. Even if 7.5% is appropriate for the first regulatory period, it won't necessarily be appropriate for the 2nd or subsequent regulatory periods.

ARBITARY ROUNDING RULES SHOULD NOT BE APPLIED TO CALCUALTION OF TAMRP

16. Vocus agrees with BARNZ and MEUG's submissions on use of rounding rules to determine the TAMRP.

17. MEUG helpfully referenced the Commission's statement that *"Rounding saves regulators from the need (and hence the cost) to estimate the TAMRP to a very high degree of precision, and this is desirable because high levels of precision in this area are spurious. Rounding also helps limit lobbying over small variations in the TAMRP estimate"*. It is unclear how selecting a mid-point WACC of 7.3% would result in a *"spurious"* or false degree of precision that is avoided by selecting 7.5%. Selection of 7.3% rather than an TAMRP with a greater number of decimal points would involve *"rounding"* which would save the Commission *"the need … to estimate the TAMRP to a very high degree of precession"*.

18. It appears that the use of rounding rules has resulted in lower than otherwise WACC under Part 4 and a higher than otherwise WACC under Part 6. While it could be argued the impact of rounding will average out over-time this would be over a very significant length of time, particularly if the TAMRP is only reviewed as part of the statutory reviews of the IMs, and not at each reset.

AN UPLIFT SHOULD NOT BE PROVIDED FOR ASSET STRANDING RISK OR DEREGULATION

19. Vocus agrees with the comments made by Vector and Vodafone on this matter.

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[2] The Commission would effectively be conceding that it got the EDB/Transpower 2020 DPP/IPP TAMRP wrong if it adopted Sapare's (on behalf of Chorus) advise that: *"Since there have been no exceptional economic events during the four-year period that would have significantly affected the TAMRP, it can be argued that the TAMRP is unlikely to have instantaneously shifted from 7.0% to 7.5% just before the re-estimation in 2019. Hence, it seems reasonable to adopt an estimate of 7.25% for the TAMRP from 2017 and apply that value in estimating annual WACC from then. Similarly, there is no obvious argument for waiting to apply the known 2019 estimate of 7.5% for TAMRP until 2020 and we thus consider that the TAMRP of 7.5% should be applied to annual estimates of WACC from the TAMRP estimation date rather than the IM determination date."*

20. Both Vector and Vodafone highlight that the Commission is adopting an inconsistent approach between Part 4 Commerce Act precedent and Part 6 Telecommunications Act.

21. Vector commented that *"The different methods adopted by the Commission to address stranding risk in different sectors highlights an uncoordinated and unpredictable response for managing a key concern for regulated service providers"*.

22. Vodafone went into more detail on this point, detailing the views the Commission has expressed about non-systematic risk allowances in the Part 4 setting. None of the cited points are industry or legislative-specific. Either the Commission should provide an asset stranding risk allowance under both Part 4 and Part 6 (the levels may differ, depending on risk levels) or none at all. The Commission's views cited by Vodafone make it very clear there should be no allowance.

23. If the Commission perseveres with its current position it should explain the apparent contradiction in the views it has expressed in the Part 4 Commerce Act setting to that which it holds in its draft fibre IMs determination.

L1 CAPITAL IS ADOPTING A 'CHICKEN LITTLE' POSITION ON CHORUS' ASSET STRANDING RISK

24. L1 Capital's submission places substantial emphasis that Chorus' fibre business is subject to asset stranding risk the Commission isn't proposing to adequately compensate it for, as well as that *"New Zealand's fibre legislation … introduces additional conditions for telecom operators which affect the returns for investors and the impact the probability of normal returns on an ex ante basis"*.

25. Given the comments L1 Capital has made we would expect to see substantial 'asset flight' with L1 Capital exiting or downscaling its investment in Chorus.

26. Instead L1 Capital has expressed bullish views about its investment in Chorus including that Chorus has been *"extremely undervalued"* and it *"expect[s] dividends to accelerate over the next five years"*.[3] Chorus has been one fund's largest investments, and L1 Capital has sought and gained clearance from the Crown to boost its stake in Chorus.

27. We have not been able to reconcile the conflicting L1 Capital views on Chorus' value and the impact of the Commission's proposed fibre regulation and IMs.

AUSTRALIAN INVESTORS CONTINUE TO MIS-UNDERSTAND NZ WACC PERCENTILE PRECEDENT

28. In our cross-submission in response to the Commission's emerging views on the rules and IMs that will underpin the new regulatory regime for fibre networks, we noted *"The submissions from Paradice Investment Management, Ubique Asset Management,*

[3] https://www.computerworld.com/article/3480030/bullish-forecasts-for-chorus-value-from-l1-capital-new-street-research.html

TelstraSuper et al were notable for their homogeneity, including repetition of the same factual errors in each of the submissions".

29. In our previous cross-submission, we also commented that *"The Australian investors all seem to be under the impression above mid-point WACC applies to all other regulated industries"*. This is perpetuated by Coopers Investors who incorrectly stated that setting the WACC at midpoint *"… is inconsistent with other regulated utilities in New Zealand that are set at the 67th percentile*" [emphasis added].

30. Vocus reiterates our *"question why none of these sophisticated investment companies appear to be aware of airports and telecommunications precedent where above mid-point has never been adopted, and why these precedents haven't shaped their expectations"*.

THERE IS NO REASONABLE BASIS FOR EXPECTING WACC ABOVE MID-POINT

31. Chorus has no reasonable basis for claiming: (i) *"The 50th percentile is at odds with the pre-implementation period as well as other utility regulatory precedent"* and (ii) *"the 75th percentile was the regulatory precedent available in 2011, when fibre prices were fixed until 2020. Standing in an investor's shoes at 2011, this is a reflection of expectations at the time fibre commitments were made"*. Sapare, on behalf of Chorus, similarly and incorrectly claimed *"an uplift"* would *"align with reasonable expectations as at May 2011 of there being an uplift"*.

32. These claims ignore a number of obvious factors, including:

    (i) The *"regulatory precedent"* included both a WACC uplift for regulated suppliers in electricity and gas, and NO uplift for airports. It is simply not credible to claim Part 4 provides precedent that means a WACC uplift could reasonably be expected while ignoring Part 4 precedent where an uplift hasn't been provided.

    (ii) The Commission's Part 4 IMs were subject to merit appeal, including appeal over whether there should be an uplift (MEUG).

    (iii) Regardless of the outcome of the IM merit appeal (it resulted in the Commission in reviewing and lowering the WACC percentile uplift), it could reasonably be expected that the question of WACC uplift would be disputed in any subsequent price determinations under the Telecommunications Act, as has proven to be the case in relation to the UBA and UCLL FPP determinations and now the Part 6 WACC IM.

    (iv) Chorus has argued ad finitum that the Commission cannot simply transfer Part 4 precedent to Part 6. Chorus commented, for example, that *"…we agree there are important differences both between the two regulatory regimes and the markets being regulated. This means Part 4 positions will not always be appropriate to adopt under Part 6"* and *"We also agree the Commission must make the judgements required under Part 6 independently by reference to the statutory*

provisions and purpose statements of Part 6, and cannot simply import approaches under Part 4 without testing whether they are fit for purpose".[4]

33. This misunderstanding about WACC percentile precedent is also reflected in ENA and Unison submissions, both of which fail to acknowledge there is existing precedent for mid-point WACC under Part 4 Commerce Act (in relation to airports) and under the Telecommunications Act (where a WACC uplift has never been adopted).

34. ENA seem to be both arguing that Chorus should expect a WACC uplift because the Commission provided an uplift to electricity and gas regulated suppliers, but also that *"the Commission should ensure that the decisions it makes on fibre IMs are not seen as a precedent for the next EDB IM Review in 2023"*. If the decisions the Commission makes in relation to the fibre IMs shouldn't be seen as a precedent for the Part 4 IMs, then as a matter of logic ENA must hold the view that the Part 4 IMs are not a precedent for the fibre IMs. ENA cannot logically or consistently hold the view that fibre IMs are not a precedent for Part 4 IMs but the electricity and gas WACC IM is a precedent for the fibre IMs. ENA's position does not make sense.

CHORUS' VIEWS OF OVABAA CONTINUE TO SUPPORT ADOPTION OF AN INCREMENTAL COST APPROACH TO CALCULATION OF FINANCIAL LOSSES

35. Our cross-submission in response to the Emerging Views consultation noted *"Chorus' own submission explains why an incremental cost approach is "economic common sense""* and Chorus had explained why *"financial losses should be determined on an incremental basis in their advocacy of OVABAA"*.

36. This is now reinforced by Chorus' submission in response to the draft IMs determination. Chorus has not refuted our comments about how its previous statements should be interpreted.

37. What Chorus explains well is that the amount a service or new service needs to recover to be financially economic (not make a loss) is the incremental or avoidable cost of providing the service. Relevant also is Chorus' observation that the amount that should be allocated to any service depends on what can be recovered from providing the service. In the case of a service where market conditions means it will operate at a loss, and/or cannot contribute to shared and common costs, this would be limited solely to the incremental or avoidable cost.

38. Chorus' comments can be reasonably read with *"unregulated services"* replaced with 'new services' or the 'UFB service':

> *"Under economic principles in a WCM [workably competitive market], the allocation of costs to any service or group of services over the long term: … Has the lower bound of incremental or avoidable cost, and in*

[4] Chorus, Submission in response to the Commerce Commission's invitation to comment on its proposed approach to the new regulatory framework for fibre dated 9 November 2018, 21 December 2018, paragraphs 78 and 79.

competitive markets the provision of the service would cease if revenue was insufficient to recover incremental or avoidable cost …"

"The amount of cost that is allocated to any service reflects the amount that can be recovered from that service, which in turn reflects the conditions in the market."

"What's important, is that in a competitive market firms will make decisions as to whether or not to enter a market based on the incremental cost of that entry. It's accepted in regulatory economics literature that requiring a regulated business to recover an accounting allocation of cost from unregulated activities can create an artificial barrier to its participation in those activities."

"The Commission's assumption that all unregulated services would be expected to make some contribution to common costs is not unreasonable. However, there is no basis for assuming that every service would be capable of generating a surplus over incremental cost consistent with an accounting-based allocation of shared costs. The accounting-based allocators the Commission requires will be based upon a measure of the physical use of the assets rather than the conditions in the relevant market. There will be occasions when the provision of an unregulated service is able to generate a surplus over incremental cost, but not a surplus that covers the accounting-based allocation.

"In these circumstances, a fine tuning of the allocation would be required to make provision of the unregulated service financially viable and provide an incentive for provision – this is the purpose of OVABAA."

"When considering Chorus' entry into related unregulated markets, there may be circumstances where Chorus could generate revenue in excess of incremental cost, but not enough to cover the full ABAA."

COMPLEXITY SHOULD NOT BE RELIED ON AS AN ARGUMENT FOR NOT ADDRESSING COPPER-FIBRE DOUBLE RECOVERY

39. Vocus is sympathetic to Vodafone's view that *"It is entirely unacceptable to dismiss proposals from consumer advocates for minimising double recovery simply on the basis of the workload it creates for the Commission and the LFCs"*.

40. We also agree with Vodafone's observation that the approach the Commission is taking to Crown Financing *"created significant additional complexity for little gain"* and *"This decision is particularly stark in the context of the Commission refusing to do additional work to improve accuracy of far more material parts of the regime. … the Commission has not attempted to account for double recovery with copper due to its complexity, nor is it willing to consider removing unused regulated assets from the RAB"*.

ANALYSYS MASON HASN'T PROVIDED LEGITIMATE GROUNDS FOR THE COMMISSION TO DISREGARD THE DOUBLE-RECOVERY ISSUE

41. We remain of the view that the Commission needs to address, and at least mitigate, double-recovery between fibre and copper services to meet the requirement to limit excess returns. We have previously discussed that the Commission could look at the assumptions it has made about sharing of assets/allocation of common costs. The Spark

and TERA submissions highlight that there are a number of potential approaches the Commission could legitimately and reasonably adopt. The focus now should be on determining the best methodology for avoiding or mitigating double recovery.

42. Analysys Mason (on behalf of Chorus) has commented unfavourably on the TERA's report into options for addressing the fibre-copper double-recovery issue. With respect, we find the Analysys Mason critique unconvincing and it doesn't provide a sound basis for not addressing the double-recovery issue.

43. Analysys Mason raise issues about how to determine the level of double-recovery but their critique doesn't put into question that there is a double-recovery issue. They have overstated the difficulties and complexities in addressing the fibre-copper double-recovery issue.

44. Analysys Mason largely repeat, albeit in more detail, the difficulties with trying to do an 'apples with apples' reconciliation of copper and fibre costs/pricing. We consider these issues have already been addressed by submitters, including our own commentary on the topic. Neither Chorus nor Analysys Mason have addressed or responded to our commentary on this topic.

45. A useful way of looking at the issue that the copper RAB was based on TSLRIC, while the fibre RAB is based on actual costs, for example, is that this has direct parallels with the Part 4 RAB IM. The Commission adopted a pragmatic line in the sand, combining pre-existing Optimised Deprival Values (which conceptually has parallels with TSLRIC) for existing network assets, with actual cost valuations for subsequent assets. Analysys Mason object to *"TERA … mixing costs calculated on two different bases"* but the Commission did the same under Part 4 didn't cause any particular problems.

46. For the Commission to accept the following commentary by Analysys Mason would essentially require the Commission to conclude the approach it adopted for the Part 4 electricity RAB was inappropriate and unsuitable for PQR (DPP and IPP):

> *If the prices resulting from the FPP model are higher than those from an alternative approach such as BBM, this is not because more of the costs in that model have been allocated to copper than to mass-market fibre (because there is no such allocation): it is simply because there are higher costs in that model (under that cost standard), all other factors being equal (such as demand).*
>
> *The situation is therefore that there are 2 different cost standards required to be used by the different legislation that applies to copper services and FFLAS. Patently, if these give different total cost results, then prices calculated according to one cost standard look like over-recovery measured against the other cost standard and vice-versa (with an under-recovery).*
>
> *Mixing numbers from one cost standard with those of another will lead to meeting neither standard.*

47. Analysys Mason also object that *"TERA are assuming that both the "copper" (to be precise, non-FFLAS) and "fibre" (FFLAS) businesses are in and will continue to be in a regulatory regime that requires cost-recovery over time. This is simply not true for copper services …"* It isn't evident TERA are making any assumptions beyond that copper is currently regulated.

48. Similarly also, Analysys Mason claim addressing double recovery would be *"inconsistent with the Telecommunications Act"* on the basis that a paper MBIE subsequently produced stated: *"BBM price-quality regulation will apply only to Chorus UFB fibre services. Copper services will be treated separately"*.

49. It isn't clear on what basis Analysys Mason considers the MBIE report *"Telecommunications Act Review: Post-2020 Regulatory Framework for Fixed Line Services"* has status in the statutory interpretation of the Telecommunications Act. Regardless, the same commentary could be made about the regulation of LFC fibre and electricity network services, which are separately regulated under separate legislation. This doesn't negate the need for the Commission to ensure there isn't double recovery between the two services.

SETTING SERVICE QUALITY TARGETS WILL BE AN IMPORTANT ELEMENT OF THE PQR DETERMINATION

50. Vocus reiterates *"Service-quality setting is an essential part of any price control regime"*.

51. Chorus has commented that the seven service quality dimensions the Commission proposes *"cover every aspect of service provision"*. This is precisely what the Commission should strive for, so we are not sure on what reasonable basis Chorus could claim this *"is overly broad"*. We reiterate *"The Commission should aim capture service quality measures and targets for each of the seven elements reflected in the draft Quality Dimensions IM"*.

52. Chorus also supports the Commission adopting a flexible approach to the Quality Dimensions IM to reflect *"the dynamic nature of telecommunications markets and agree this means flexibility is important"* but then complains the *"proposal would allow for any service measure or standard, leaving Chorus with little certainty beyond the existing purpose statements"*. Chorus needs to recognise that one of the trade-offs between principles-based/flexible IMs and a highly prescriptive set of IMs is that the less prescriptive the IMs the less certainty they will provide. This is well understood by regulated suppliers under Part 4 Commerce Act who supported a more prescriptive approach to the Part 4 IMs than Chorus.

53. We also remind Chorus that certainty is something that develops over-time and doesn't 'instantly' develop once the IMs are in place or the first PQR determination has been made. The Commission has appropriately recognised service quality metrics and targets can both be reasonably expected to develop and change over-time and so neither should be locked into the Quality Dimensions IM. Chorus appears to advocate for a static set of quality metrics: *"The final list of metrics be made exhaustive, instead of examples"*. Greater certainty will emerge in relation to service quality setting when the Commission makes the first, and subsequent, PQR determinations.

54. Chorus also *"suggest the description of the principle of controllability, including that a measure or standard should be "able to be controlled (at least to some extent) by the*

regulated provider" be amended". Chorus wants the Commission to remove the words *"at least to some extent"* from the principle of controllability, commenting that *"Performance needs to be controllable within the relevant timeframe if it is going to have a performance standard attached – for example, it is not appropriate to attach a revised standard to something that will take three years to shift the dial on"*.

55. Chorus position is worth considering in the context of the Part 4 service quality measures and targets. The level of service quality performance in relation to measures such as unplanned SAIFI and SAIDI depend on variables that are outside of the control of regulated suppliers such as weather conditions and tree management (depending on who is responsible for the trees). If the Commission adopted Chorus' proposed approach to Part 4 it would likely result in a substantially narrower set of service quality measures. We would expect the same under Part 6. What is important is that the regulated supplier has some ability to influence or control performance under each service quality measure, not that it has absolute or full control.