EOI and non-discrimination guidance

Cross submission | Commerce Commission

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Executive Summary

A key objective from the inception of UFB was that Crown funded networks would be available on an open access basis to access seekers and service providers. Open access was provided for by Part 4AA of the Act which requires non-discriminatory access to state funded networks, transparency, standard terms offers and the provision of layer 1 unbundled services to the equivalence standard. These measures formed part of a suite of obligations on Chorus and LFCs (collectively **the LFCs**) aimed at promoting efficient investment and competition, and to limit the scope for distortionary conduct by the LFCs.

This is a live and important issue for the success of the legal framework underpinning the UFB initiative. At the time of the 2011 amendments to the Act, Parliament agreed to forbear from imposing on Chorus and LFCs obligations to provide unbundled layer 1 services until 31 December 2019. Forbearance has now expired and Vodafone, Vocus and Vector all indicate a desire to unbundle Chorus and LFC networks so that they may also invest and provide layer 2 services.

However, the LFCs have proposed unbundled layer 1 services that are infeasible for access seekers to use. We consider that the LFCs' proposed design and associated business rules result in services that will be complex and costly to support in the market, and an unacceptable service experience for our customers. LFC rules that feeder, splitter and distribution elements must be taken together limit any ability for access seekers to innovate and offer new services. Vodafone and Vocus have further written to the Commission noting that the LFCs' complex pricing structures result in a wholesale charge of around $62 per connection[1]. This makes it more expensive than most Layer 2 bitstream products and more expensive than the cheapest retail fibre broadband plans. The risk of distortionary outcomes being engineered by the LFCs is clearly a live issue in this context.

Commission guidance on the application of Part 4AA is as important as the ongoing IMs process in promoting the regulatory framework and beneficial end-user outcomes.

Chorus and LFCs proposed approach would mean Part 4AA has no effect

The parties have different views on how LFCs' statutory and Deed obligation to treat access seekers and their own downstream businesses *in the same way* should be applied in practice.

Chorus and LFCs have submitted that:

- The Commission must only apply the specific words of the Deed, and these words are paramount over Part 4AA and the purposes of the Act[2]. Under this approach Chorus and LFCs could design services and processes that advantage themselves or distort competition, and argue that this was a permitted outcome as access seekers were offered, say, the same pricing structure or service company delivery performance as to their own business unit.

- The Commission must apply the ECPR and EEO cost standard for identifying whether a price squeeze has occurred. This is an outlier standard that – by guaranteeing the recovery of the LFCs downstream market costs - goes far beyond that commonly applied in competition law let alone what would be appropriate for Part 4AA purposes.

- The equivalence and non-discriminatory obligations cannot apply where LFC layer 2 prices in early years are below a yet to be defined measure of cost.

The LFCs' proposed approach would result in Part 4AA having no practical effect; the part would in effect become incidental or subservient to the Part 2 and Part 6 elements of the Act. Instead, LFCs

[1] https://comcom.govt.nz/__data/assets/pdf_file/0027/151578/Letter-received-from-Vodafone-New-Zealand-and-Vocus-Group-New-Zealand-Layer-1-unbundling-price-11-April-2019.pdf

[2] Chorus submission on guidance 2 June 2020 at para 11.

prefer an approach that applies the Commerce Act rather than the Telecommunications Act and leaves no obligations to provide access on equal terms beyond what might be placed on an unregulated vertically integrated firm. This approach minimises the scope for competition and maximises their ability to influence downstream markets beyond the intention of parliament.

We disagree with the LFCs' proposed approach. Open access has been a key objective for state funded fibre networks from inception, and Part 4AA has a specific and important purpose in the regulatory framework to provide for open access to those networks on an equivalent and non—discriminatory basis. We believe this means that access seekers should have the same opportunity to operate, to exploit efficiencies, and to innovate over, state-funded LFC fibre networks as the LFCs' own downstream businesses.

Promoting compliance

Chorus also proposes that the Commission adopt an approach that gives it certainty, and that this implies the ECPR/EEO based standard because Chorus can estimate this based on its data.

We disagree. Commission guidelines should promote compliance with – rather than modify - Part 4AA obligations. Chorus' proposed approach would in effect modify the obligations set out in the Act on the basis of implementation convenience. Rather, the guidelines can usefully provide guidance on costing parameters or principles as suggested in Vector's submission that support the Part 4AA purpose.

The guidelines could also strengthen the self-supporting and compliance promoting aspects of the obligations. For example, the Commission noted in its advice to the Finance and Expenditure Select Committee that equivalence, standard term offers and transparency work together to allow the Commission to identify discriminatory behaviour.

Pricing structure

Enable and UFF submit that the proposed pricing structures can promote efficient outcomes. As noted in our earlier submission, we agree that pricing structures need to be considered in light of the effects on competition.

However, in this case, access seekers are unable to act on efficiency incentives as LFCs appear to have built inefficiencies into the layer 1 service design and business rules. Enable and UFFs pricing structure cannot promote efficient outcomes. The access seeker choice to invest in unbundling and to innovate for the benefit of consumers is undermined and the RSP is shepherded towards the existing suite of products which restrict the scope for innovation and novel consumer outcomes.

The issue further highlights the interplay between price and non-price aspects of services and how this can lead to outcomes inconsistent with the Part 4AA obligations.

Introduction

1. Thank you for the opportunity to comment on submissions on the Commission's draft equivalence and non-discrimination guidance (**the guidance**).

2. In our earlier submission we supported the draft guidance that:

    a. Reinforces key regulatory principles, i.e. that equivalence and non-discrimination are broad obligations that require Chorus and LFCs (collectively **the LFCs**) to not favour their own downstream businesses, and

    b. Recognises that LFCs have incentives to distort competition in associated and downstream markets.

3. However, in implementing the proposed approach, we noted that the default LRAAC based margin test is unlikely to promote the purposes of the Act and that the alternative standards summarised in the guidance will inevitably be applied.

4. In this submission we address LFC proposals that:

    a. Part 4AA be applied in a way that minimises LFCs Part 4AA obligations to provide access in a non-discriminatory, equivalent and transparent manner. The proposed approach would leave us with price equivalence and non-discrimination obligations (**the obligations**) that likely have no practical effect.

    b. Suggest Part 4AA should be considered incidental to the regulatory framework, and that the focus should be Part 2 and Part 6 outcomes.

    c. Undermine the importance of transparency and non-price obligations for promoting compliance, including equivalent and non-discriminatory prices.

    d. Fail to recognise the interplay between pricing structure and service design for Part 4AA outcomes.

LFCs proposed approach leaves Part 4AA having no real effect

5. LFCs propose approaches to equivalence and non-discrimination that have the effect of minimising the role of the undertakings. For example:

    a. Chorus proposes that: equivalence and non-discrimination are simply part of an integrated suite of regulatory mechanisms which collectively achieve the relevant purposes of Part 2 and 6 of the Act[3]; the obligations should be applied to the words of Deeds as a bilateral instrument between LFCs and the Crown[4]; and the Commission should look to Commerce Act competition policy case law for determining pricing equivalence[5].

    b. Enable and UFF proposes that; the equivalence and non-discrimination are two mutually exclusive possibilities[6]; the Commission can only apply the self-supply leg of non-

[3] Chorus at para 8.
[4] Chorus at para 14.
[5] Chorus at para 28-29.
[6] Enable and UFF at 1.16 and 3.21.

discrimination to layer 1 services[7]; and that if an entity complies with the equivalence obligation it must also conclude that non-discrimination has been satisfied[8].

c. LFCs point to the limited ability to extract excessive profits or "below cost" prices in the integrated upstream/downstream prices as reasons not to apply the Commission's proposed approach[9].

6. However, the LFCs proposed approach is likely, in practice, to marginalise Part 4AA obligations, possibly to the extent that the Deeds would have no practical effect. The proposed approach:

   a. Results in a default cost standard for assessing margin squeeze that no downstream new entrant businesses could feasibly achieve. On one hand any downstream business shared or start-up costs would not be considered in the price squeeze margin, while on the other hand the downstream firm would be assumed to have exploited all the efficiencies available from serving the whole market.

      While we would expect a downstream new entrant firm to be more efficient or innovative than the monopoly provider, Chorus and LFCs business rules bound possible efficiencies or innovation by, for example, requiring access seekers to use the feeder, splitters and distribution fibres in the same configuration as the LFC.

   b. Could potentially lead to perverse outcomes whereby provided the service were supplied to access seekers using, say, the same price and the provisioning system as its own business unit, the access provider could be considered equivalence and non-discrimination compliant. With this approach, LFCs could implement pricing structures or design services with limited functionality (i.e. by business rules that require feeder and splitters to be taken together or complex and long provisioning requirements) that advantage themselves or distort competition in downstream markets.

   c. Invites the Commission to assess Part 4AA obligations so that they are subsidiary or support Part 6 fibre settings. For example, that the Commission should assess the price squeeze margin in the potentially competition layer 2 services in a way so that it preserves the guaranteed expected returns of a Part 6 model. In the long run, no new entrant can compete against a firm whose returns are guaranteed by the BBM model.

7. We don't support the LFCs' proposed approach. That approach won't mitigate LFC incentives and ability to distort competition and would favour vertically integrated provision of services over more efficient market structures.

8. Further, the approach won't promote the open access objectives of the original UFB programme nor competition for end user interests as anticipated by Part 4AA of the Act.

Open access is a key requirement for Government funded networks

9. The current Deeds reflect a conscious legislative choice to add Part 4AA to the Act, reflecting policy decisions that state aid funded networks would be operated as open access infrastructure[10].

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[7] Hence, the obligation is to not treat the access seekers differently to the provider in this case (there is no obligation to not treat access seekers differently) [1.21].

[8] Enable and UFF at 1.24.

[9] Chorus at para 36 and Enable UFF para 2.8-2.10.

[10] https://www.beehive.govt.nz/release/ultra-fast-broadband-investment-proposal-finalised

LFCs are required to provide access to state funded networks and an open access basis

10. The requirement that there be open access to Crown funded infrastructure has been a guiding principle from the start of UFB. The Government summarised this objective at the time as[11]:

> 44. A key principle underlying the UFB Initiative is that the infrastructure funded by the government will be open access.
>
> 45. The requirements for open access to LFC networks can be summarised as follows:
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> > • LFCs must provide a specified dark fibre product on an open access basis;
> >
> > • LFCs may design their passive networks in any way they see fit, subject to compliance with certain principles;
> >
> > • where an LFC chooses to provide Layer 2 active products, then it must provide a particular specified Layer 2 active open access product; and
> >
> > • equivalence and transparency requirements will apply.
>
> 46. The government's approach to open access is based on:
>
> > • international best practice for government-funded next-generation fibre networks, as applied to the New Zealand context;
> >
> > • a broad trade-off between open access requirements and maintaining sufficient incentives for private sector co-investment to be forthcoming; and
> >
> > • an assessment of the likely market outcomes arising from the UFB Initiative, and in particular the likely demand for passive and active open access products delivered on an LFC's network.

11. The Government's open access approach relies on equivalence and non-discrimination, alongside other measures such as transparency and use of standard contracts. These principles remain in Part 4AA and the Deeds today.

12. The Government also restricted its UFB investment to the provision of layer 1 fibre services, and explicitly recorded its expectation that the provision of layer 2 services would be competitive[12].

> 54. While the government will allow LFCs to provide Layer 2 active products, the government does not intend its funding to be used for the provision of Layer 2 active products. This is because once a passive fibre network exists, the market can be expected to provide Layer 2 active products on a commercial basis without government intervention. As such, where the LFC chooses to provide Layer 2 active products, it will be expected that the partner will fully fund the provision of such products.

13. The accompanying Q&As reinforced that this model would promote investment and innovation[13]:

> **Why is the government only investing in dark fibre?**
>
> Government investment at that level will facilitate the competitive commercial provision of ultra-fast broadband services over fibre with the minimum regulatory intervention. In very simple terms, this is the most "raw" access to the underlying infrastructure, and provides the best competition outcomes because the wholesale customer has full control and flexibility and has the ability to innovate in downstream services.

14. Therefore, while the UFB proposal evolved over time, the essential open access requirements have remained unchanged. From the inception of the UFB initiative policy makers have

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[11] MED *New Zealand Government Ultra-Fast Broadband Initiative: Overview of Initiative* September 2009
[12] MED, *Overview of initiative,* September 2009.
[13] Minister's release https://www.beehive.govt.nz/release/ultra-fast-broadband-investment-proposal-finalised

highlighted the importance placed on promoting layer 2 competition based on equal access to layer 1 infrastructure. The Commission must interpret the equivalence and non-discrimination obligations set out in the Act and Deeds consistently with this purpose.

The Government agreed to forbear layer 1 unbundling until 31 December 2019

15. The Government amended the UFB model in 2010 to require that LFCs must offer Layer 2 services but, for an initial period, would not be required to offer layer 1 services to the equivalence standard. In other words, through a forbearance period to 31 December 2019[14], LFCs would not be subject to the threat of layer 1 unbundling or regulatory price control, nor be obliged to provide an unbundled layer 1 service to the "equivalence of inputs" standard[15].

16. Officials outlined in their report to the Finance and Expenditure Select Committee considering the amendment bill[16] that the purpose of the amended approach was to address regulatory risks being priced in to the UFB bidders business case, particularly the tender requirement that the fibre network be fully unbundled from the beginning of deployment and the possibility of price regulation being introduced at some time in the future. Bidders were concerned that the tender requirement to fully unbundle the network and meet equivalence requirements from the start could limit LFCs ability to target segments and may be costly for newly-formed businesses to implement[17].

17. Therefore, Officials reported to the committee that the Government agreed to forbear these obligations for an interim period[18]:

> Overall, the Government concluded that deferring the unbundling requirement: recognised the issues with infant markets, allowed coverage and price objectives to be met, and led to fibre services that could be tailored for the full suite of access seeker and end user needs. This was to the long-term benefit of end users.
>
> However, the Government did believe it would be important to require LFCs to build their networks and systems in a way that enables future unbundling, and required LFCs to provide unbundled services by 2020. This timeframe allowed sufficient time for the fibre network to be built and to allow for an appropriate competitive outcome when the market was more mature. It was also consistent with the timeline around price forbearance.

LFC proposed approach undermines anticipated open access outcomes

18. The Part 4AA obligations remained a key part of the regulatory framework, sitting alongside Part 6 in promoting competition and regulating access to the network. All elements of the framework were to apply from 31 December 2019 when the market had developed further, and access provider infants had the opportunity to grow up.

19. Therefore, in light of the anticipated open access model and specific timebound forbearance period, it is concerning that Chorus and LFCs now seek to walk back a key plank of the UFB initiative, and the underlying principle that publicly funded networks should be available on an open access basis. The LFCs proposed approach:

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[14] This was noted in the RIS as 31 December 2020, but subsequently implemented as 31 December 2019.
[15] https://treasury.govt.nz/sites/default/files/2010-11/ris-med-ufbam-nov10.pdf
[16] Page 7 of *Officials' report on the Telecommunications (TSO, Broadband, and other matters) Amendment Bill. Part One: amendments that would be made regardless of which bidders are successful in the Ultra Fast Broadband Initiative,* 1 April 2011
[17] The Government further recognised that it was uncertain whether there would be early demand for unbundled mass market services and there might be an opportunity to innovate in the short term through "virtual unbundling" that was being considered overseas at the time.
[18] Page 7 of Officials' report. 17. While the Commission and submitters expressed concerns over the proposed forbearance approach, Officials noted that they continued to believe that the previous reasons for retaining the forbearance period until 2020 remained valid.

a. Will inevitably undermine open access by requiring access seekers to be more efficient than the LFCs' own downstream businesses and overcome established incumbency advantages built up through the forbearance period to compete at layer 2.

b. Will extend the forbearance period significantly beyond that anticipated by Parliament, and arguably indefinitely, and

c. Is not expected in practice to promote competition on top of the layer 1 fibre network as envisaged.

20. It is difficult to see the LFC proposed approach and outcomes supporting the purposes of the Act.

Part 4AA obligations in the regulatory framework

21. Chorus also proposes that the Commission should consider the specific wording of the Deeds as paramount in determining open access, and invites the Commission to prioritise Part 2 and 6 of the Act, implicitly pushing Part 4AA into a supporting function[19]. Chorus concludes in its submission that

> 10.The overall aim of these regulatory constraints is to make Chorus behave as if it were in a market with competition (Part 2), and to promote outcomes consistent with workable competition (Part 6), limiting the risk of excessive profits for either copper or fibre services.

22. We disagree. The Commission must consider LFC obligations under Part 4AA of the Act and their Deeds in light of the purposes and requirements of Part 4AA, i.e. the manner in which LFCs comply with the obligations must also give effect to the underlying policy objectives Part 4AA gives life to.

23. Divorcing the words of the deeds from the purposes of Part 4AA could very well result in an outcome inconsistent with the enabling legislation and is accordingly unlawful. The main requirements for undertakings are set out in the Act and these have been covered by deeds written in 2011. The Commission must assess whether a new layer 1 product is consistent with the outcomes the deeds are expected to produce in light of the purposes of Part 4AA. It would, for example, be inconsistent with the purpose or promoting competition and facilitating efficient investment[20] if the LFC was able to build a new but highly inefficient layer 1 input service which it consumed in the same way as access seekers but which consequently drove up layer 2 costs, increased product complexity unnecessarily, and limited the scale and scope of innovation which could be achieved with a truly efficient layer 1 input service.

24. Chorus' proposed approach, asks the Commission to place insufficient weight on the Part 4AA requirements on the basis that the deeds already provide enough that reflects the open access objectives of the regulatory framework. Part 4AA and Part 6, and other provisions of the Act such as the line of business protections, all contribute to a regulatory framework that seeks to both promote competition and recognise LFCs power.

25. While the Commission should be conscious of the other elements of the framework, it must ensure that its guidelines promote the legislative outcomes of Part 4AA in its own right.

26. The Commission should also be cautious that, in considering the implications of decisions across the regulatory framework, that it does not undermine key legs of the framework by showing an undue preference. For example, submitters have raised concerns that the draft guidelines risk

[19] Chorus at para 10.
[20] Section 156AC(a) and 156AC(c).

non-recovery of perceived current losses (under-recovery)[21] or solving for Part 6 NPV=0[22]. We believe that concerns relating to under-recovery and NPV=0 are unlikely to be real in any case. There is unlikely to be material layer 2 losses or risk of stranding (investment being largely demand driven, there continues to be overall growth and capacity can be redeployed) and layer 1 return is assured by the proposed BBM model (the wash-up/revenue smoothing provisions noted by the Commission and NPV=0 principle assure the return). Further, while the BBM does not apply to LFCs, we expect that information disclosure will recognise whole of life returns (over multiple periods) in a similar way to the BBM.

27. Nonetheless, the Commission should be cautious that, in considering similar concerns, the guidelines do not undermine desired open access and Part 4AA outcomes. As it stands, the draft guidelines' preference for a LRAAC standard that protects access providers layer 2 sunk costs is unlikely to provide equal access or promote competition as required by the Act.

Promoting compliance with Part 4AA Deeds

Guidelines could set out cost principles

28. If LFCs submissions are to be taken at face value, we could be heading down a path that encourages complexity, slows down the deployment of competitive infrastructure inordinately, and adds in expenses, rather than removing inefficient costs and limitations on product innovation.

29. Chorus notes that LFCs must be reasonably able to know in advance whether their proposed conduct complies with the equivalence and non-discrimination obligations[23]. It suggests that this requires the ECPR EEO standard. The draft guidelines also suggest that the EEO standard was preferred, in part, due to LFCs ability to identify the margin based on their own costs.

30. However, in terms of the proposed EEO standard, ease of implementation in itself shouldn't be a reason to apply an approach that is unlikely to produce outcomes consistent with the requirements of the Act. We expect the guidelines to promote compliance with - rather than modify - the open access obligations of the Deed and Act. Further, if guidelines are to promote compliance, they need to have some informative value through guidance on practical matters or principles that will facilitate compliance. The draft guidelines cannot provide Chorus the certainty it requests because, as the Commission notes, the appropriate test and compliance will depend on the factual situation.

31. There is a balance to be struck between providing practical guidelines while ensuring there is flexibility to consider concerning behaviour that fails to comply with the Act. In this case, flexibility and certainty could be better provided by setting out the principles that the Commission would apply to identifying the relevant margin (although detailed consideration in the factual context would still be required). For example, Vector sets out in its submission that the Commission could set out a limited number of guiding principles for useful guidance, i.e. the assumed scale of the downstream entrant.

Recognising that the Part 4AA obligations reinforce each other to promote compliance

32. The Commission could also consider setting out in the draft guidelines how the obligation to use the same systems, and the relationship between pricing and transparency obligations, all work together to promote compliance. For example, the Commission advised the Finance and

[21] Enable/UFF submit that Layer 2 prices are currently below cost and ERT should not be applied (2.9-2.10).
[22] Chorus submit at para 40 that the Commission applying an alternative approach to ECPR would require it to revisit the draft Part 6 approach to NPV=0 and stranding.
[23] Chorus at 20.1.

Expenditure Select Committee that[24], while equivalence and non-discrimination both seek to ensure that an LFC does not give itself an unfair advantage in the marketplace, requiring the same systems for internal and external supply promoted compliance with the obligations.

> 19.The critical difference between equivalence and non-discrimination is that equivalence requires that the service provider offer the same service "using the same operational processes to all Access Seekers including itself". Non-discrimination on the other hand, does not require the same systems be used, provided the service received is an equivalent service.

33. The difference was important for achieving the desired outcomes.

> 22.This difference is not just technical. It is important because where different systems are used for internal and external supply it becomes very difficult to monitor and enforce discrimination on non-price terms.
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> 23.These non-price terms can be critical for competition; end-users can place a high value on quality of service and will differentiate between service offerings on this basis. Even if such discrimination can be eventually identified and stopped, the harm to competition is not so easily rectified.

34. The Commission also advised the Select Committee that supporting open access obligations such as the use of standard terms were essential to create an effective non-discrimination regime[12]:

> 28. The Amended ITP made clear that at a minimum, non-discrimination undertakings would likely include provisions that relate to:
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> - Arms Length Dealings with the Partner – *The LFC will deal with the Partner on arm's length terms. Arms length terms means that the relationships between the parties do not include elements that the parties would usually omit, and do not omit elements that the parties would usually include, if the parties were acting independently.*
> - Standard Terms – *The LFC will maximise the use of standard terms for all commercial arrangements, and any non-standard terms will be non-discriminatory.*
> - Confidential Information – *The LFC will not disclose confidential information relating to its external Access Seekers to related parties or its own staff responsible for marketing Layer 2 Services to other Access Seekers.*
> - Access to Information – *The LFC's Access Seekers will all have the same access to information from the LFC.*
>
> 29. In the Commission's experience these obligations are essential to create an effective non-discrimination regime. The arms-length rules in the Telecom Separation Undertakings require that "the provision of the service...will be governed by a written arrangement that sets out the terms of supply, including price or appropriate transfer charge." It enables the Commission to compare a service description and associated price or transfer charge described in the internal trading arrangements with a service and its associated price provided to access seekers. In the absence of these arms-length rules, and the requirement for internal trades to be documented, it can be extremely difficult, if not impossible, to determine whether two services are the same, and therefore whether discriminatory conduct is taking place.

35. The Select Committee accepted the Commission's advice and recommendation to amend s156AD and this was reported back accordingly.

36. We agree, the Commission can promote an effective regime by providing guidance on how LFCs might comply and how Part 4AA and Deeds obligations support compliance (in the way the

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[24] https://www.parliament.nz/resource/en-NZ/49SCFE_EVI_00DBHOH_BILL10470_1_A176812/b39a635069c8b91522e6fcf521a5fbdc9f3bd883

Commission outlined in its submission to the committee). The draft guidelines, though, do not currently achieve this.

Price structure and current layer 1 offers

37. WIK advised in a report for Enable/UFF that a layer 1 feeder/distribution component pricing structure is likely efficient and does not amount to a difference in treatment[25].

38. As set out in earlier submissions, pricing structures can be efficient when viewed in isolation but can also distort competition in adjacent and downstream markets when consider in the broader market context and could readily undermine the policy intent and purpose of the provisions. The Act and Deeds prohibit different treatment between access seekers (and Chorus' own business) unless the difference is objectively justifiable and does not harm competition.

39. In this case, the design and business rules associated with the LFC layer 1 service prevent access seekers acting on the pricing signals referred to in the WIK report. The LFCs specify that the feeder and distribution fibre must be purchased together, the LFC will install the required splitter and the initial splitter must be fully used before a second is deployed. These limitations mean that access seekers are not able to act in a way that undermines efficiency in the way WIK is concerned. Conversely, and more troubling from a policy and legal perspective, access seekers are also limited in their ability to build services that are more efficient or innovative. Accordingly, we do not support the WIK's recommended approach.

40. The WIK report further highlights that the interplay between pricing structure and service design is also important for equivalence and non-discrimination purposes. Vodafone and Vocus have asked that the Commission bring forward consideration of their pricing concerns. It's likely that the Commission will need to consider pricing alongside non-price issue due to this interplay in any case, and there may be benefits bringing the non-price terms compliance review and price investigation together.

[END]

[25] Enable and UFF at para 4.5.