

**Vector Fibre:
Submission to the Commerce
Commission on marketing of
alternative services to consumers
during copper/PSTN withdrawal**

Date: 27 August 2021

Introduction

1. Vector Fibre welcomes the opportunity to comment on the Commerce Commission's letter, *Marketing of alternative services to consumers during copper/PSTN withdrawal*.
2. In our view, while it is focused on the compelling event of the withdrawal of the PSTN and copper network, the letter addresses issues relevant to marketing practices in the telecommunications industry more broadly. Accordingly, we recommend that any remedial action that arises from the Commission's initiative should apply to all situations to marketing of services when customers are considering alternatives, whether they be delivered on similar or different technologies (e.g. fibre versus fixed wireless).
3. Vector Fibre also suggests that the Commission takes into consideration the incentives of the parties involved, particularly those who have been most vocal in making complaints. Clearly Chorus has a strong incentive to see less competition from fixed wireless access (FWA) operators. However, we also see interest for the market to have a clear understanding about how different fibre line products operate. For instance, the obstruction of the layer 1 access layer has had the effect of limiting innovation for layer 2 fibre line services. We are therefore concerned the Commission is not consistently considering the opportunities for innovation in telecommunications markets and this is having an adverse impact on consumer welfare.
4. Our view is that the implementation of the principles and outcomes would be best applied by the TCF, as suggested by the Commission in 18.2.

Potential impact on innovation and competition

5. New Zealand consumers of telecommunications services have been the beneficiaries of a wide range of innovative new services and competitive pricing over the last 15 years or so, in particular since first the operational and then

structural separation of Telecom to enable the UFB programme to proceed. Initially, copper unbundling (UCLL) saw new entrants into both the fixed telephony and broadband market, with services expanding and pricing falling dramatically. The subsequent UFB roll-out (assisted by Government funding), continued the technology investment in fibre networks, particularly the neglected last-mile copper customer access network (the CAN). The upgrade of the CAN has assisted with complementing investment by other operators such as Vector Fibre with high bandwidth backbone assets.

6. In the mobile sector, we have seen data speeds increase dramatically and prices fall significantly, along with innovations such as IOT and FWA services – especially with more coverage of cell-sites with fibre backhaul. 5G offers the promise of very high bandwidth services and a wider range of services to support developments such as IOT services requiring mass connectivity (e.g. automated vehicles).
7. Vector Fibre has also been investing heavily in expanding its fibre network and developing new services, including a new range of high committed bandwidth (CIR) access services targeted at the business market. We are also expanding our range and scope of OTN transport services to accommodate the large volumes of data traffic arising from new services associated with developments such as the growth in data centres and the Cloud.
8. The strong uptake of FWA services in recent years is evidence of consumers choosing that new option that was previously unavailable. While it is widely accepted that mobile services (including FWA) cannot match the speeds and throughput of fibre, the gap is closing and in many cases an FWA service will be more than adequate for a lot of customers. And while it is desirable for customers to be armed with all the facts about a particular service and / or technology, clearly it is not in the interests of consumers to be denied such an option due to the lack of ability for service providers to be able to market their services on an equal basis.
9. As Spark notes, it offers a range of broadband options to its customers, including fibre- and FWA-based, adding,

“We also know that some customers prefer the end-to-end support that wireless broadband offers, rather than dealing with multiple parties if you have a copper or fibre broadband fault.”

Spark’s own surveys showed wireless broadband had a higher “net promoter score” (NPS) than any other broadband product it offered, she said.¹

10. An often-raised issue is the limitation of data caps on FWA services, with customers quickly hitting the cap and therefore incurring expensive overage charges. We would note that, while more acute for wireless services, this issue applies to both fibre and FWA services. And the market is responding to the issue and increasing the data caps available for customers, notably during the lockdown conditions due to the Covid pandemic.

Equal treatment must apply

11. In our view, it is important to be mindful of the incentives of the parties making the claims and take note of the behaviour observed in the market. For instance, Chorus has been the most vocal party on the issue of FWA and claims made in marketing material, for instance,

“We believe that New Zealanders should be able to make informed decisions based on facts and unbiased equivalent data, rather than partial information and hype,” Rousselot said.

“Saying a service is fast doesn’t cut it if the speed slows significantly at peak times or when you’ve reached a certain data limit.”²

12. Vector Fibre has no issue with the statements above, but would add they need to apply equally to Chorus and LFCs. In our view, Chorus itself is in the practice

¹ “Satisfaction with fixed-wireless broadband has dropped since ‘demand challenge’ of Covid-19, says Chorus”. Stuff.co.nz, 19 August 2020

² “Revenue and profit slip as competition and COVID-19 bite Chorus”, Reseller News, 23 August 2021

of making selective claims about its services. For instance, it promotes its Hyperfibre services as follows:

“Hyperfibre is the next generation of fibre, dramatically increasing capacity and unlocking exponential upload and download speeds...

You will have three speed options to choose from:

2000 Mbps (2Gig) plan with symmetric upload/download speeds (available nationwide in UFB1 areas)

4000 Mbps (4Gig) plan with symmetric upload/download speeds (available nationwide in UFB1 areas)

8000Mbps (8Gig) plan with symmetric upload/download speeds (8Gig speeds are available in selected exchanges only).”³

13. The bold claims overlook the CIR (the **committed** information rate), which is the measure that ensures the bandwidth that is dedicated for the customer – relevant for periods of peak time consumption. If there are other customers on the shared network competing for the same capacity, then the performance of the Hyperfibre will diminish. It is in effect a version of the same issue that Chorus itself has complained about. The applicable CIR for the Hyperfibre products is only outlined deep into the product description on the Chorus website.
14. For that reason, it is our view that any remedial action resulting from this initiative be applied equally to all services – including business customers – not simply to those situations where consumers are choosing a replacement option for their copper-based services.
15. What’s more, Chorus claims that it is comfortable with competition⁴. However, in our view, it has constructed its unbundled fibre product (known as PONFAS) purposely in a way to discourage uptake and therefore thwart competition at the layer 2 fibre layer. This issue has been well canvassed in the Commission’s investigation and associated submissions, but we would add to the best of our

³ Chorus website: <https://www.chorus.co.nz/broadband/hyperfibre>

⁴ “Revenue and profit slip as competition and COVID-19 bite Chorus”, Reseller News, 23 August 2021

knowledge, there is **not a single active unbundled service** supporting a paying active end customer service in New Zealand. This is despite the requirement on Chorus to offer it on an equivalent and non-discriminatory basis since 1 January 2020 and the supporting framework in Part 4AA of the Telecommunications Act. It is telling that the scope of the Commission's initiative does not consider fibre based competition at the residential level, because there effectively isn't any due to Chorus' market behaviour. Vector Fibre would like to be able to offer innovative layer 2 services to the business market consuming PONFAS but the product terms are making that very difficult. In our view the terms clearly do not comply with the EOI obligations.

Comments on outcomes and conduct principles

16. In Vector Fibre's view, the appropriate approach to this issue is to involve the industry via the TCF, as outlined in 18.2 of the Commission's letter. Experience tells us that industry involvement is essential if we are to develop a meaningful and enduring framework via a code.
17. We do not have any comments on the outcomes and associated principles over and above those we have addressed in this submission. We would like to reiterate our view that the Commission and the industry should not miss the opportunity to ensure any remedial action is applicable to all services and not just in the context of residential customers moving from a copper-based broadband service to a service over an alternative technology. We note that the sections 233 and 234 of the Act do not limit RSQ codes to consumer residential customers.

Conclusion

18. While Vector Fibre is supportive of the Commission's initiative to ensure that customers are well informed and given the appropriate time to consider

alternative services when migrating off copper-based services in the residential context, we are concerned that the scope is too narrow. All of the issues identified in the outcomes are applicable to a lesser or great extent to any switching event, and for business customers as well as residential customers.

19. Understanding the incentives of the parties involved in any complaints should form an important backdrop to the initiative. In our view, Chorus is the party leading the complaints but is itself not always clear in its product communication, and is stifling further fibre-based competition by ensuring its PONFAS service is neither commercially nor operationally viable.
20. We would like to see the industry involved via the TCF in developing an appropriate code for this issue.