

Commerce Commission Fibre Input Methodologies Cross-submission

17 February 2020





1 Executive Summary

2degrees welcomes the invitation to cross-submit in relation to the Commerce Commission's (the Commission's) "Fibre input methodologies: Draft decision - reasons paper" (draft Reasons Paper) and draft fibre Input Methodologies (IMs) under Part 6 of the Telecommunications Act (the Act).

Submissions from Access Seekers have highlighted to the Commission a number of areas of the Commission's framework that need to be addressed prior to finalising the Input Methodologies (IMs), and in particular that the proposed approach appears overly generous to Chorus, with multiple decisions swayed in its favour.

Submissions from Access Seekers have also highlighted concerns across RSPs about the level of the Commission's engagement with RSP views versus Chorus' generally.

Key areas where it is clear multiple Access Seekers, including 2degrees, consider the Commission still needs to address include:

- The definition and determination of financial losses must be on an incremental cost basis (in particular, 2degrees, Spark, Vector, Vocus and Vodafone).
- Double recovery of shared and common costs between fibre and copper (in particular, 2degrees, Spark (and TERA) and Vocus).
- Chorus should not be provided with an uplift for so-called asset stranding risk (in particular, 2degrees, Spark, Vocus and Vodafone). This is simply a wealth transfer from end-users to Chorus.
- Capex IM requirements should be tightened and more closely aligned to the Transpower Capex IM.
- There are 'missing' elements in the draft Fibre IMs, such as a requirement for Chorus to provide quantitative analysis in support of its capex proposals. Vector and Vodafone also highlighted that the Commission has refrained from adopting standard asset lives for large asset classes, but the reasons the Commission provided for setting standard asset lives under Part 4 is applicable to Part 6.

In addition, there are a number of points raised in submissions that 2degrees do not support:

- Chorus again suggested ICABS does not include FFLAS. It has already been established that FFLAS includes ICABS.
- Chorus (with support from some electricity networks and investors) continues to seek a WACC uplift without evidence to support setting WACC above mid-point.
- Chorus suggesting independent verification should be narrowed to only cover large Individual Capex Investment proposals.
- Chorus appears to want to remove the requirement to certify "information provided is true and correct". We consider this requirement will help provide the Commission surety information provided by Chorus, which it relies on, is true and accurate.



In terms of submissions on the Quality IM:

- 2degrees reiterates that an effective wholesale quality regime is critical to the quality of service that our customers receive and as a result, the Quality IM is a key area of concern for 2degrees.
- 2degrees welcomes Chorus' desire to consult on quality standards and agrees quality standards are an essential aspect of Chorus' business as well as a key part of good asset management.

While we welcome Chorus' comments on consultation and dialogue with stakeholders, we are concerned in many aspects Chorus and/or LFCs appear to be seeking to minimise the scope and nature of service quality regulation:

- Chorus is seeking more limited, but an 'exhaustive' list of quality dimensions that are locked in by the Quality Dimensions IM and cannot be amended. 2degrees considers the seven dimensions identified by the Commission are appropriate, and that the Commission must be able to introduce new metrics as market conditions change, as the fibre network matures and if new or additional metrics are identified as important.
- Enable and Northpower have suggested information disclosure be removed from the Quality IM. ID plays a unique role in PQ regulation, one that cannot simply be filled by relying on other quality related obligations.
- We do not agree with the recommendation from Enable and Ultrafast that Access Seekers should be required to notify end-users of wholesale network outages. The purpose of outage notifications is to help Access Seekers determine how to best manage their networks so that any impact on end-users is avoided or minimised.
- Enable and Ultrafast have suggested that performance measures can be accurately obtained by simply measuring port utilisation. We consider this is only one of several factors that are important in measuring customer experience.



2 Access Seeker submissions further support 2degrees' comments

Submissions received by the Commission from Access Seekers highlight similar concerns to those of 2degrees, that need to be addressed prior to the Commission finalising the Input Methodologies (IMs).

Concerns about the level of the Commerce Commission's engagement with RSP views

Our submission noted that we have previously submitted on how to calculate financial losses in response to the Emerging Views Paper, and it was disappointing the Commission chose to repeat the same Emerging Views' positions without addressing the arguments that 2degrees had put forward in favour of an avoidable or incremental cost allocation approach. In the absence of an explanation for the Commission's position, we noted our reasons for disputing the Commission's position still stand.

It is clear we are not alone in holding these views and concerns.

For example, Vodafone commented "We are extremely disappointed that the Commission has chosen to calculate losses asset in a way that will maximise its value for the LFCs, and cause fibre prices to sky-rocket. Again, however, we have little appetite for continuing to comment on this matter given the lack of serious engagement from the Commission".¹

More generally, Vodafone also commented that "Unfortunately, the Draft Decision appears to be primarily concerned with responding to the LFCs, and has given little consideration of views raised by those representing consumer interests" and "... we hope to see a greater level of engagement on some of the points we have raised in previous submissions than we have seen to date. Participating in this process is a costly and time consuming exercise, and it is difficult to justify the effort with the level of engagement from the Commission in the draft decision...".

The 2022 deadline appears to be driving an overly generous approach to Chorus

In our submission we noted that in the areas where the Commission is not aligned with the views of end-user representatives and RSPs, the Commission has opted for a higher level, less prescriptive approach that will be easier to implement within the statutory timeframe. The less prescriptive approach will favour Chorus and will not satisfy the legislative purpose of limiting their ability to extract excessive profits. A number of the draft decisions could result in regulated fibre prices which include 'generosities'.

Our concerns are supported by Vodafone's observation that the Draft Decision is "heavily in favour of the LFCs" and "A number of concessions have been made that in sum result in a significant bias, including:

- Not attempting to allocate costs between layer 1 and layer 2 services.
- Not attempting to account for double recovery of costs between copper and fibre.

¹ Vodafone, Submission on Fibre Regulation Draft Decision, 28 January 2020, page 11.



- Simplifying cost allocation to use more proxies and aggregate further, because it causes less work for the LFCs.
- Applying the full asset Beta during the losses period despite Lally clearly identifying that it must be less, and may be closer to zero than the full Beta.
- Rounding up the TAMRP to the nearest 0.5%, increasing it from 7.3% to 7.5%, one of the most material adjustments.
- Applying a TCSD with little evidence that it is necessary.
- Picking a Beta at the top end of CEPAs range.
- Building an entire model to estimate an allowance for the cost of Crown financing.
- Not requiring a verifier for base capex in the first period.
- Not stranding assets unless they are deregulated.
- Providing an allowance for the potential for deregulated assets not being able to earn a return.
- Not accounting for the time value of money for tax losses”.²

‘Missing’ elements of the draft fibre IMs

In our submission, we commented that part of the Commission’s change in approach from that which it adopted in Part 4 of the Commerce Act may reflect a change in philosophy but “the differences go beyond prescription versus principle, with the fibre IMs simply silent on a number of critical elements which are addressed in the Part 4 IMs”.

Time and resourcing constraints meant we did not identify or document all the potential differences which may not be justified. We limited the examples to some of the differences between the draft Chorus and Transpower Capex IMs.

Vector has provided an additional example in relation to asset valuation and depreciation:³

The Commission has refrained from adopting standard asset lives for large assets classes used to deliver FFLAS. This contrasts with the approach to IMs under Part 4 of the Commerce Act where standard asset lives are specified for major asset classes.

While Vector cited this to support the Commission also adopting a more liberal/non-prescriptive approach for regulated suppliers under Part 4, 2degrees considers the Commission got the approach right under Part 4 of the Commerce Act and should continue to adopt the same approach under the Telecommunications Act.

Spark also commented on this matter submitting that “the Commission should ... consider setting standard technical asset lives”⁴ and cited the Commission’s views on the benefits of standard assets lives in the context of its 2010 IM decision”.⁵ The 2010 IM decision points

² Vodafone, Submission on Fibre Regulation Draft Decision, 28 January 2020, page 2.

³ Vector Communications, submission to the Commerce Commission Fibre Input Methodologies Project, 28 January 2020, paragraph 5.

⁴ Spark, Fibre Input Methodologies: Draft Determination, 28 January 2020, paragraph 46.

⁵ <https://www.oag.govt.nz/2016/ufb/docs/ufb.pdf>



Spark cited aren't particularly industry-specific, so have strong precedent value for the fibre IMs.

Either way, the Vector and Spark submissions reinforce our view that the Commission needs to review the IMs clause-by-clause to ensure differences in approach under Part 4 of the Commerce Act and Part 6 of the Telecommunications Act are justified and well explained.

Definition and determination of financial losses must be on an incremental cost basis

The other RSP submissions (in particular, Spark, Vector, Vocus and Vodafone) supported and reinforce our position that financial losses must be determined on an incremental or avoidable cost basis.

As we said in our submission, the Act is clear that the costs included are "as a direct result of meeting specific requirements of the UFB initiative."⁶ Vector's submission raised the same point: "The construction of Part 6 also expressly contemplates common overhead opex to be excluded from the calculation of losses. The absence of any requirement akin to section 176(1)(a)(iii) for the allocation of common costs in section 177 meant Parliament implicitly prohibited shared overhead costs from being recognised in any loss quantification as part of the financial loss asset".⁷

Vector's submission also reinforces the point we made that calculating financial losses and determining the PQ regulations' revenue allowance through financial separation of regulated and unregulated services are two separate exercises. The justification for taking a particular approach for one of the tasks can't just be assumed to be (and isn't) applicable for the other. Vector commented, for example, that "... the exercise for determining losses for Chorus and LFCs from their FFLAS differs markedly from setting forward-looking access prices" and detailed well those differences.⁸

⁶ Telecommunications Act 2001, s 177(5).

⁷ Vector Communications, submission to the Commerce Commission Fibre Input Methodologies Project, 28 January 2020, paragraph 22.

⁸ Vector Communications, submission to the Commerce Commission Fibre Input Methodologies Project, 28 January 2020, paragraph 20.



3 Issues with points raised in LFC submissions

There are a number of points raised in submissions that 2degrees do not support.

It has already been established that FFLAS includes ICABS

In our submission, 2degrees welcomed the Commission's explicit clarification to stakeholders that "input services such as ... ICABS ... are FFLAS"⁹ and that the Departmental Report to the Select Committee had "clearly stated that this was the policy intent"¹⁰. We also commented "This should be considered a given, but Chorus has repeatedly claimed FFLAS does not include ICABS". Chorus is continuing to repeat the same assertion that FFLAS does not include ICABS. We are treating this matter as closed as it has already been determined by the Commission (and by Parliament in introducing the changes to the Telecommunications Act) that ICABS is included in FFLAS.

The EDBs have erred in their comments about WACC percentile

2degrees does not agree with the view that the decision not to allow an upward adjustment to the WACC estimate is inconsistent with both the purpose of section 162(a) and the third principle of the Commission's economic framework.¹¹

If the Commission simply accepts that under its economic framework an uplift is warranted, the Commission would make the same mistake the High Court identified in its IMs Merit Appeal decision, when the Court noted that "No supporting analysis was provided by the Commission. Indeed, the propositions advanced for choosing a point higher than the mid-point seemed to be considered almost axiomatic".¹² The Chorus and Sapere submissions also invite the Commission to reach the same flawed conclusion under Part 6 as it made under Part 4.

The submission points we and others have made, as well as the reasoning the Commission provided for a mid-point WACC, detail well why the WACC percentile for Chorus' fibre business should be set no higher than mid-point. With respect, the EDBs have not engaged with these telecommunications and fibre-specific points and instead have relied on high-level generic commentary from the Part 4 WACC percentile decisions.

We are also not sure how to reconcile the view that an above mid-point WACC is needed to incentivise investment, with Vector's concern that the Commission needs to address the risk of over-investment: "Part 6 of the Act also requires the Commission to establish criteria for examining the efficiency of Chorus and LFC capex proposals. The chief reason for undertaking such an inquiry is to limit the opportunity for any Averch-Johnson (AJ) effect to develop, which is commonly referred to as "gold-plating"¹³". One of the ways to mitigate the risk of the AJ effect is to ensure Chorus is not over-compensated (above mid-point WACC) for its investments.

⁹ Commerce Commission, Fibre IM: Draft decision - reasons paper, 19 November 2019, paragraph 2.136.

¹⁰ Commerce Commission, Fibre IM: Draft decision - reasons paper, 19 November 2019, paragraph 2.62.

¹¹ Vector Communications, submission to the Commerce Commission Fibre Input Methodologies Project, 28 January 2020, paragraph 35.

¹² WELLINGTON INTERNATIONAL AIRPORT LTD & ORS v COMMERCE COMMISSION [2013] NZHC [11 December 2013], paragraph [1462].

¹³ Vector Communications, submission to the Commerce Commission Fibre Input Methodologies Project, 28 January 2020, paragraph 56.



ENA's comments predominantly focussed on the matter of whether service quality standards can be set in a way that drives appropriate investment. We acknowledge the challenges in setting service quality standards and that they are an imperfect tool. It should be stressed though that this is a minor element of the reasoning why a WACC uplift is not justified. Even if the Commission accepted ENA's reasoning it would not be sufficient basis for a WACC uplift.

We were surprised ENA claimed a WACC uplift was a core component of the regulatory architecture at the time UFB roll-out bids were being prepared and therefore that would have factored into Chorus and its predecessor, Telecom's bids. Unison also incorrectly claimed that during this time, the 75th percentile was an accepted part of the regulatory landscape.

It is difficult to understand why it would be "unfathomable" to ENA that there wouldn't necessarily be an automatic WACC percentile uplift for Chorus' fibre business:

- The Commission only applied an uplift to regulated suppliers in electricity and gas, and not to airports. This provided clear precedent that there would not be an automatic uplift. It also highlights that an uplift was NOT "a well-entrenched part of the regulatory landscape" under Part 4 of the Commerce Act, let alone the Telecommunications Act where it has never been applied.
- A number of electricity networks have made submissions pointing out industry-specific factors between electricity and telecommunications which justify either a higher uplift for electricity than in telecommunications or an uplift in electricity, with no uplift in telecommunications.
- Consistent with the electricity network submissions, the Commission has stated "Our evaluation approach will reflect the different incentives and market factors applicable to Chorus versus firms operating under the Part 4 electricity regulations (such as Transpower New Zealand Limited)". Similarly, the Commission has stated "We must apply the regulatory framework established by Part 6. Where judgements are required, we must make those judgements independently by reference to the purpose statements in the Act, and cannot simply import the approach we have adopted under Part 4".¹⁴
- These points should not be contentious or surprising. An obvious inference is that just because a WACC uplift was granted for electricity and gas doesn't mean there will be an uplift for telecommunications (and vice versa).
- Given a WACC percentile uplift has never been applied under the Telecommunications Act it is unclear how a decision not to include an uplift for Chorus' fibre services could be described as a "fail[ure] to continue with the WACC uplift" or as "undermin[ing] overall confidence in regulatory stability and predictability".¹⁵ A "time consistent" decision would be to set WACC percentile for Chorus' fibre business at mid-point.

¹⁴ Commerce Commission, Fibre input methodologies: Draft decision - reasons paper, 19 November 2019, paragraph 2.102.

¹⁵ ENA, Draft Fibre IM Determination, 28 January 2020, paragraph 13.



Chorus appears to be misrepresenting the Commission's decisions on Part 4 WACC percentiles

Chorus has claimed “the Commission relied on the qualitative rather than quantitative case for an uplift when considering the appropriate cost of capital percentile for electricity and gas businesses under the Part 4 regime”.¹⁶

However, we understand that under the Part 4 regime:

- The Commission gathered significant evidence (including quantified evidence) that an uplift was justified for electricity and gas regulated suppliers;
- This included that the WACC percentile should be within a reasonable range from the 60th to the 75th percentile; and
- Where the Commission applied judgement was in determining where within the range it should set the WACC uplift at.

To date, no evidence or quantified evidence has been provided that could be relied on to provide an uplift for the fibre WACC IM. Chorus' submission, and other submitters that have advocated for an above mid-point WACC, are effectively asking the Commission to repeat the mistakes it made in its initial Part 4 WACC IM decision and to treat the need for an uplift as “axiomatic” and rely solely on subjective judgement to determine what that uplift should be.

Chorus goes on to note “the Commission applied an uplift for gas pipeline services, without any direct quantitative analysis demonstrating the net benefits of an uplift to the mid-point cost of capital”.¹⁷ Chorus doesn't explain what it considers the implication of this to be, but we presume their intended inference to be that quantified evidence isn't needed or that the Commission could rely on the evidence in relation to electricity.

2degrees has not formed a view as to whether electricity and gas are sufficiently similar (and/or substitutable) so that evidence in relation to the consequences of underinvestment on service quality in electricity can be assumed to be applicable for gas. We are aware some submitters suggested the optimal WACC percentile would differ between electricity and gas, as well as differing to telecommunications (copper). In relation to the question of whether (or what) uplift should be provided for fibre, this does not matter. In considering the potential evidence needed to justify a WACC uplift for fibre the Commission has already detailed the potential benefits, and analysis required to justify an uplift, differ between fibre and electricity.

Implications of the Quality Dimensions IM for WACC uplift

We agree with Chorus that “Quality measures and standards should be principally concerned with ensuring that Chorus continues to provide services at a level of quality consumers expect and does not run down its assets or degrade its services in order to maximise its return on capital”.¹⁸

One of the reasons for setting service quality standards is that under a price cap or revenue cap, regulated suppliers have incentives to try and increase profits by cutting expenditure/investment needed to maintain or enhance service quality. The importance of

¹⁶ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 225.

¹⁷ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 226.

¹⁸ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 314.



service quality regulation is heightened by Chorus' suggestion it will underinvest if it doesn't get an uplift.

We would not depict this as "a substitute for a cost of capital uplift".¹⁹ Rather it simply reflects that different elements of PQ regulation are interrelated.

Even if the Commission accepted Chorus' viewpoint, which we do not consider justified, the Commission has provided sound basis for not providing an uplift without relying on the potential role of service quality regulation.

Chorus appears to have problems with a requirement to certify "information provided is true and correct"

Chorus claims "the proposed director certification includes two clauses that are consistent with Transpower requirements plus an additional clause – information provided is true and correct".²⁰

It would be more accurate to say the Commission has recast the Transpower Capex IM requirements. Clause 9.4.1 of subpart 4 of the Transpower Capex IM requires that "Where ... a director or chief executive officer of Transpower has made a certification involving a matter of fact in accordance with this Part" and "he or she ... becomes aware that the fact is untrue ... or has significant cause to doubt the accuracy of that fact ... that director or chief executive officer must notify the Commission as soon as reasonably practicable".

The Commission has simply converted a negative requirement (to disclose ex post if information turns out to be untrue or inaccurate) to a positive requirement (to certify ex ante that the information is true and accurate). While we support the positive requirement, it appears to leave a potential gap where the director's view has changed. The Commission should consider applying clause 9.4.1 of subpart 4 of the Transpower Capex IM to the Chorus Capex IM.

Chorus claims the Commission has not provided a rationale for the additional clause. However, we consider this clause helps to provide the Commission surety information provided by Chorus, which it relies on, is true and accurate. We support this.

There is significant and material risk that Chorus will over-forecast its opex and capex requirements

Chorus attempts to downplay forecasting concerns, and the extent to which the Chorus Capex IM needs to address this issue, by making the claims that "the risk of over-forecasting is mitigated in other ways".²¹ Chorus is vague about what these "other ways" may be. It is unclear to 2degrees how any of the points Chorus raised would reduce or mitigate forecasting concerns. We reiterate the issues that we have raised in our earlier submissions.²² For example, we have raised concerns about the experience with Chorus' cost estimates for TSO and TSLRIC, including that "The Commission was not able to rely on any of the Chorus' TSO or TSLRIC estimates and they were widely different (higher) than

¹⁹ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 313.

²⁰ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 391.

²¹ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 345.

²² For example, refer to:

- the section "The Commission lacks the safeguards it has with Part 4 Commerce Act price control" in 2degrees, Cross-submission on Commerce Commission Fibre Regulation Emerging Views Paper, 31 July 2019; and
- the section "Information asymmetries and limited oversight of Chorus given time pressures" in 2degrees, Submission on Commerce Commission Fibre Regulation Emerging Views Paper, 16 July 2019.



the Commission’s determinations”, and that these gaps compare unfavourably when compared with Part 4 experience where the Commission has been able to rely on supplier provided information.²³

Independent verification should apply to all supplier and capex proposals

Chorus has provided no explanation or reason for its claim that they are not confident an independent verifier will add value for all individual capex proposals. 2degrees does not support Chorus’ suggestion the Commission consider applying the independent verification requirement only to larger individual capex applications or allow for the scope of verification to be agreed in the first stage decision-making if that could result in the verification being narrowed in any way.

Capex IM requirements should be tightened and more closely aligned to the Transpower Capex IM

We are unclear of the basis on which Chorus claimed there is a risk “the proposed capex IM has the potential to treat Chorus in much the same way as Transpower, notwithstanding our considerable differences in market power and technology and market dynamics, which suggests that differences should occur in applying regulation”.²⁴

Our submission, in contrast to Chorus’ claims, made the objectively verifiable observation that “The draft Chorus Capex IM is a particularly clear example where the Commission has chosen to substantially deviate from the approach taken in Part 4 Commerce Act. This is highlighted by the fact the draft Chorus Capex IM is just 16 pages, whereas the Transpower Capex IM is 101 pages”.²⁵

We also reiterate many of the differences are not simply philosophical: there are gaps or apparent omissions in the content of the drafts. To address these issues, the Commission should tighten the draft Capex IM requirements to further mitigate against the risk of over-investment and/or Chorus making inefficient investment decisions.

²³ 2degrees, Cross-submission on Commerce Commission Fibre Regulation Emerging Views Paper, 31 July 2019, pages 6 and 7.

²⁴ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 9.5.

²⁵ https://comcom.govt.nz/_data/assets/pdf_file/0026/88280/Consolidated-Transpower-capital-expenditure-input-methodology-determination-as-at-1-June-2018.PDF



4 2degrees does not support Chorus' views on the Quality Dimensions IM

2degrees reiterates that an effective wholesale quality regime is critical to the quality of service that our customers receive and as a result, the Quality IM is a key area of concern for 2degrees.

2degrees welcomes Chorus' desire to consult on quality standards and agree quality standards are an essential aspect of Chorus' business as well as a key part of good asset management. Chorus is able to consult on any aspect of PQ regulation or its supplier and capex proposals without express direction in the IMs to undertake this work.

Our submission on the draft IMs determination noted "With the right culture and a customer-centric focus, Chorus will proactively engage and consult with its customers and other stakeholders regardless of what the Commission or the IMs require it to do. From 2degrees' perspective we want the consultation to be useful for both Chorus and its customers and other stakeholders."

We reiterate also that as part of the assessment factors in consideration of any supplier or capex proposal, Chorus should be required to demonstrate:

- The extent to which and how its engagement and consultation with its customers and other stakeholders influenced/impacted on its proposals; and
- That its proposals support the objective to "supply fibre fixed line access services of a quality that reflects end-user demands" (s. 162(b) Telecommunications Act).

The extent and effectiveness of any Chorus consultation, depending on the outcome of the consultation and level of support it gains, may impact the nature of any Commission consultation. For the avoidance of doubt, we would not support Chorus consultation on service quality substituting for or replacing Commission consultation.

While we welcome Chorus' comments on consultation and dialogue with stakeholders, we are concerned in many aspects Chorus and/or LFCs appear to be seeking to minimise the scope and nature of service quality regulation.

The seven dimensions identified by the Commission are appropriate

There have been suggestions from Chorus, Enable and Ultrafast, that the seven quality dimensions are overly broad. 2degrees does not support this view.

Chorus' observation that "The dimensions cover every aspect of service provision" supports the adoption of seven dimensions (with service quality measures and targets for each).²⁶

Similarly, 2degrees does not support combining the ordering and provisioning dimensions as suggested by Enable and Ultrafast. Ordering (which includes consideration of responsiveness to Access Seekers) and provisioning (installation) are discrete processes, both of which are important in delivering fibre services that meet end user quality requirements.

²⁶ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 278.



The final list of metrics in the Quality Dimensions IM should not be made exhaustive

The Commission must be able to introduce new metrics as market conditions change, the fibre network matures and if new or additional metrics are identified as important.

2degrees does not support the suggestion from Chorus and Northpower, that the final list of metrics should be made exhaustive. To do so would unnecessarily constrain the Commission's ability to respond to changing market conditions or instances where the Commission sees that certain aspects of quality need more attention, in what is a dynamic market.

While the IMs are intended to provide certainty, this does not mean absolute certainty or immediate certainty. Greater certainty and predictability will be established in part through the Quality Dimensions IM and also over-time as the Commission makes PQ determinations and it becomes clearer what service quality measures will be used and what the service quality targets will be. The need for certainty must also be balanced against the requirement of flexibility for change.

Notably, if the metrics were to be made exhaustive the Commission would need to be certain they were 'right'. As set out in our earlier submission, the current metrics do not currently address responsiveness to Access Seekers adequately. Encouraging wholesaler responsiveness to Access Seekers is a key tool available to the Commission to ensure that regulated providers are incentivised to provide FFLAS that meet end user requirements. This should be remedied by adding a metric to the Customer Service dimension, which, as discussed in our submission, will give the Commission oversight of the process by which wholesale service agreements are amended.

Quality is influenced at all levels and ID obligations must reflect this

2degrees does not agree with Chorus' view that focusing on output measures of quality is the right approach to setting quality measures and standards. While this may be appropriate for quality standards set under PQ determinations, ID regulation must be used to provide greater transparency on the processes by which quality is influenced, which as Chorus notes, happens at a number of levels (structural, tactical, incremental and operational).²⁷

As set out in the joint RSP submission on quality, telecommunications services are complex, and quality can easily be influenced by changes to technical specifications. The significance of these changes may not be apparent to parties who are not Access Seekers, and their impact may take some time to play out. This means that once an issue is detected at the output stage, it could take years to address.

The ID obligation which gives the Commission oversight of the process by which wholesale agreements are amended, as proposed, will provide greater insight into how quality is being influenced before those impacts are felt at the output level, and is an established method of regulation in comparable jurisdictions.²⁸ Sufficient flexibility would be maintained as it is only the process by which changes are made that is proscribed, not actual technical standards that can evolve over time.

²⁷ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 327.

²⁸ BEREC Common Position on best practice in remedies on the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location imposed as a consequence of a position of significant market power in the relevant market (8 December 2012) at [BP32c]: "NRAs should take oversight for the process of setting SLAs. NRAs should determine the level of their involvement in this process by taking into account specific market circumstances and particular concerns for discriminatory behaviour".



Principles have a role to play but must not unreasonably restrict the Commission's ability to make appropriate regulations

2degrees acknowledges that principles can be a useful way to evaluate quality standards and measures, however if principles are added to the Quality IM, the IM must be clear these are intended to act as guidelines and that in some instances certain principles will take precedence over others. Without this acknowledgement, principles incorporated into the Quality IM could unreasonably restrict the Commission's ability to respond to changing market conditions.

Quality regulation is an essential part of PQ regulation that cannot be replaced by other obligations

The Commission has identified that there is a risk Chorus will be incentivised to degrade FFLAS that is used as inputs for other services (including DFAS).²⁹ Chorus claims that if the Commission uses PQ regulation as well as other tools available to it under Part 6 to address that risk, the Commission will be engaging in "double regulation" which would result in "using the wrong tool for the job".³⁰ We disagree. It is clear in the legislation that each of anchor services, DFAS and unbundled fibre services are intended to be subject to full Part 6 regulation, including both DFAS regulation and PQ regulation.³¹ Section 227, 228 and 229 regulations alone are not sufficient to ensure end-users are provided with the quality of service they require and PQ regulation is essential to limit a regulated supplier's ability to increase their profits by failing to adequately invest.

The role of information disclosure cannot be replaced by existing obligations

2degrees also does not agree with the suggestion from Enable and Ultrafast that ID should be removed from the Quality IM. ID plays a unique role in PQ regulation, one that cannot simply be filled by relying on other quality related obligations. It ensures that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.³² Information collated through other obligations, such as TCF Codes, is not subject to the same regulatory framework/requirements and cannot fulfil the statutory purpose.³³

A WACC uplift is not required for Chorus to provide quality service

Chorus claims quality regulation, without a WACC uplift, will impede service differentiation and innovation.³⁴ 2degrees does not accept this claim. The Commission has explicitly stated that it has interpreted "quality that reflects end-user demands" as "the quality end-users are willing to pay for" and that this is reflected through *minimum* quality standards.³⁵ Further, regulated providers are free to create differentiation and innovation by offering (and charging more for) services that are of a higher quality than that required by regulation.

In addition, and as the Commission has noted, there is no guarantee that regulated suppliers will choose to invest in higher network quality if an uplift is allowed. 2degrees agrees with the

²⁹ Commerce Commission, Fibre IM: Draft decision - reasons paper, 19 November 2019, paragraph 3.1449.

³⁰ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 317.

³¹ Departmental report to Economic development, Science and Innovation Committee, 10 April 2018, Issue 82, page 18.

³² Section 186.

³³ Telecommunications Act 2001, s 187(2)(b).

³⁴ Chorus, Submission on Fibre Input Methodologies, 28 January 2020, paragraph 306.2.

³⁵ Commerce Commission, Fibre IM: Draft decision - reasons paper, 19 November 2019, paragraph 3.1440.



Commission that quality regulation is a more targeted tool that can specifically address the expectations of end-users in relation to the level of quality provided by regulated providers.³⁶

Outage notifications are an important tool for Access Seekers

We do not agree with the recommendation from Enable and Ultrafast that Access Seekers should be required to notify end-users of wholesale network outages. The purpose of outage notifications is to help Access Seekers determine how to best manage their networks so that any impact on end-users is avoided or minimised. Almost every wholesale network outage will impact Access Seekers, however, not every outage will impact end-users. In some cases, Access Seeker network engineers will be able to mitigate the outage so that it does not impact end-users. In other cases, outages will only impact end-users in a limited geographic area – in those circumstances, 2degrees proactively notifies impacted customers.

Fault, frame delay, loss and delay variation are all important measures of performance

Enable and Ultrafast have suggested that performance measures can be accurately obtained by simply measuring port utilisation. We consider this is only one of several factors that are important in measuring customer experience.

In addition, we do not agree with Enable and Ultrafast that information relevant to faults can be obtained solely via the availability and performance dimensions. This recommendation will reduce incentives on LFCs to be appropriately responsive to Access Seekers. Targeted reporting on the incidence of network faults will allow the Commission to more accurately track network degradation and responsiveness to Access Seekers over time, as well as provide transparency of this fault information to relevant stakeholders.

The principle of controllability

2degrees supports the principle of controllability - that a measure or standard should be “able to be controlled (at least to some extent) by the regulated provider”. We note it is inevitable external factors mean service providers, including in workably competitive markets, won’t have full control over service quality outcomes. This isn’t a reason to exclude any particular service quality measure.

³⁶ Commerce Commission, Fibre IM: Draft decision - reasons paper, 19 November 2019, paragraph 3.1467.2.