



New regulatory framework for fibre

Submission to Commerce Commission

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ABOUT VOCUS

1. Vocus New Zealand is the third largest fixed line operator employing over 800 staff In New Zealand. Our retail operation includes a number of challenger brands - Slingshot, Orcon, Flip, CallPlus and 2Talk. We are also an active wholesaler of services including access, voice and broadband over both fibre and copper.
2. Vocus has made significant investments in New Zealand. We are the largest copper unbundler with a presence in over 200 exchanges throughout New Zealand. In addition we operate 4,200km fibre optic network transits between virtually all major towns and cities, and connects directly into all major peering exchanges.
3. Our customers in New Zealand range from government agencies, integrators, large corporate, SME and residential households. We are committed to New Zealand's fibre future.
4. Vocus is committed to New Zealand and is one of the few large NZ telecommunications companies to base all its customer service call centres here in New Zealand rather than out-sourcing its customer service operations overseas.
5. Vocus Group is one of the fastest growing telecommunications companies in Australasia and a major provider of voice, broadband, domestic and international connectivity and data centers throughout New Zealand and Australia.
6. Thank you for the opportunity to make this submission. If you would like any further information about the topics in this submission or have any queries about the submission, please contact:

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SUMMARY

7. Vocus welcomes the opportunity to make this submission on the new regulatory framework for fibre.
8. **Vocus supports use of an Expert Advisory Panel:** We will be interested to understand how the Commerce Commission intends to use the Panel. Past experience with use of Vogelsang as an expert in the electricity and gas WACC percentile review appeared to work well.
9. **The new purpose for “promotion of workable competition” is a key element of the new regime [Q4]:** The section 166(2)(b) purpose is deliberately broad referring to “telecommunications markets” and “telecommunications services”, whereas the section 162 purpose is limited to “markets for fibre fixed line access services”.
10. If Chorus requests exemptions from prohibitions on it offering services above layer 2 or end-to-end services the impact on competition (section 166(2)(b)) will need to be carefully considered. The wholesale-retail split is a core component of fibre regulation and promotion of competition in telecommunications.
11. **Part 4 precedent will be of varying relevance [Q6, Q23 and Q24]:** The fibre WACC Input Methodology is an example where Input Methodology development should be straightforward, based on the Part 4 WACC Input Methodology and copper pricing (including 50th percentile) precedent. This should allow the Commerce Commission to focus more on other aspects of the development of the new regulatory regime.
12. A key legislative design decision in the transfer of the Part 4 price control regime to Part 6 of the Telecommunications Act was to adopt the provisions which apply to Transpower, including a Capital Expenditure Input Methodology. The electricity transmission Capital Expenditure Input Methodology reflects the importance of rules which ensure only prudent and efficient investment takes place.
13. **Real financial capital maintenance does not mean a guaranteed return [Q7 and Q18]:** Consideration should be given to the interaction of the “real financial capital maintenance” principle with: (i) the principle of allocating risk to the party that is best able to manage it. For example, what is the extent to which any losses Chorus has incurred in the roll-out of the UFB network a consequence of its own actions, and its UFB bid?; and (ii) the application of a revenue cap for fibre, and a price cap for copper. The combination of the revenue and price caps reduces the risk to Chorus of a slow transition from copper to fibre.
14. **The existing 3 principles only relate to section 162 and leave a gap for 166(2)(b) [Q8]:** Vocus would like the Commerce Commission to adopt the philosophy behind the original Telecommunications Act of “as much market as possible, and as much government as necessary”,¹ and “promote as much competition as possible, and apply as much regulation as necessary”. The Minister of Communications, at the time the Act was introduced, noted “This will mean more choice for consumers and more competition in the market”.²
15. **Prescription versus flexibility [Q8, Q13, Q14, Q15 and Q25]:** A bright line test or principle for determining the extent to which the Input Methodologies should be prescriptive (or,

¹ <https://www.beehive.govt.nz/release/landmark-telecommunications-act-passed>

² <https://www.beehive.govt.nz/release/landmark-telecommunications-act-passed>

colloquially, 'crank the handle') or flexible, is to consider which elements of price-quality control will require change and the exercise of judgement at each regulatory reset, and which will not. Any element of the price-quality control that can be operated on a 'set and forget' basis should be incorporated into the Input Methodologies. This may include additional Input Methodologies which sit outside the minimum set of Input Methodologies required by section 176.

16. **Double-recovery and excess rents are a real risk [Q10, Q17 and Q21]:** We share the concerns raised by 2degrees at the December Workshop about potential for 'double-recovery' of costs from both fibre and copper revenues. It will be important to ensure no costs allocated to UBA and UCLL services are also allocated to fibre, at least to the extent UBA and UCLL services continue to be supplied.
17. **Unbundling of sub-component services such as provision of the ONT [Q17]:** The provision of the Optical Network Terminal (ONT) is an example where the "*promotion of competition*" objective comes into play. There is considerable scope for product differentiation and innovation if choice of ONT is not dictated by Chorus. ONTs will get more functionality, modems may not be required in the future etc.
18. Competition is hampered by Chorus bundling the cost of provision of the ONT into the fibre service, regardless of whether the Retail Service Provider (RSP) wants Chorus to provide it or not. Chorus' bundling of the ONT with fibre services harks back to the Government Post Office days when Telecom insisted, on supposed technical grounds, that everyone needed to use Telecom permitted phones, and couldn't supply their own.
19. **Service quality in the procurement of fibre connections is an ongoing problem [Q25 and Q26]** which is harming the success of the UFB roll-out. Service quality will require considerably more attention than it has been given under Part 4, even without the addition of a new Quality Dimensions Input Methodology.
20. Ensuring a suitable Service Level Agreement (SLA) regime that incentivises Chorus and LFCs to deliver a quality service is a key consideration for RSPs. The ability of poor performance by Chorus and LFCs to drive significant costs into RSPs needs to be considered.
21. It will be important for the Commerce Commission to build an understanding of the problems RSPs and end-users are having with Chorus' service provisioning to get a full picture of the matters the Quality Dimensions Input Methodology, and the service quality targets, will need to address.
22. **Supplier proposals [Q 27a]:** We recognise supplier proposals are used for regulation of Transpower and regulated suppliers seeking a Customised Service-Quality Price Path (CPP), under Part 4. We are nervous about potential application to Chorus based on telecommunications experience though. Most recently, the problems with the TSLRIC calculations Chorus commissioned were well documented in the Commerce Commission's UBA and UCLL Final Pricing Principle (FPP) determinations.
23. Having highly prescriptive Input Methodologies which minimise discretion or room for judgement will be particularly important for any rules or methodologies relating to supplier

(Chorus) requirements to present a price-quality path proposal (if supplier proposals are adopted as part of the new regulatory regime).

24. **Anchor Services need revising for the initial reset:** The development of revised versions of the Anchor Services, including possibility of additional Anchor Services is important for the initial reset. This should be treated as a priority, once the starting Anchor Services are put in place in regulation. We don't consider the Anchor Service specification MBIE has indicated will be fit-for-purpose when it comes into effect in 2022.
25. The less attractive/more out-of-date the Anchor Service specifications are, the less effective they will be in acting as an anchor. The Anchor Service concept relies on the discipline of Chorus knowing if it sets the price for higher specification services too high, end-users will revert to the Anchor Service.

INTRODUCTION

26. Vocus welcomes the invitation to comment on the Commerce Commission's proposed approach to the new regulatory framework for fibre, issued on 9 November 2018.³
27. We appreciate the Commerce Commission holding the December Workshop and the one-week extension for cross-submissions. We also appreciate the intention to give advance notice of timetables, phase the work to ease consultations, and to hold further workshops.

STEEP LEARNING CURVE FOR THE SECTOR

28. Vocus, along with other telecommunications service providers and industry stakeholders, is developing its understanding of the Part 4 Commerce Act type price-quality regulation, and what it could mean for the telecommunications sector and provision of fibre services.
29. We are interested in understanding what learnings and precedent the Commerce Commission considers can or should be drawn from the implementation of the Part 4 regime, the application of the Input Methodologies in the various price-quality resets over the last decade, the High Court Merit Appeal decision and the first statutory review of the Input Methodologies. We would welcome the Commerce Commission providing its perspective on these matters in the Emerging Views consultation, and in future workshop(s).

TIGHT TIME-FRAME FOR DEVELOPING THE FIBRE INPUT METHODOLOGIES AND NEW REGULATORY REGIME

30. We are mindful delays in introducing the new telecommunications legislation, combined with a pre-set Implementation Date, places the Commerce Commission and stakeholders under considerable pressure to undertake the work needed to develop and implement the new fibre regulatory regime by January 2022.
31. Given the time constraints for implementing the new regime, we are particularly supportive of the Commerce Commission's decision to publish the consultation paper before the Bill received Royal Assent and the associated regulations have been made.
32. There will need to be a substantial diversion of industry resources as the Commerce Commission develops and implements the new regulatory regime. Some organisations will be better placed to deal with this than others.
33. It is evident from the large 'cast' of accounting, economic and legal advisors Chorus had at the December Fibre Workshop that they are best placed to resource-up their capacity to manage the time constraints for the work that will need to be undertaken. RSPs and consumer representatives don't have the same luxury and will be operating at a disadvantage through-out the review.

³ In this submission all references to Part 4 are to Part 4 of the Commerce Act, and all references to Part 6 are to Part 6 of the Telecommunications Act. Unless stated otherwise, references to sections of legislation are references to sections of the Telecommunications Act.

MANAGING THE DEVELOPMENT OF EACH OF THE INPUT METHODOLOGIES [Q1]

34. We would not welcome the first consultation on drafts of the Input Methodologies being for the entire suite of Input Methodologies, as indicated by Figures 4.1 and 4.2. We support consultation on a staggered basis and Commerce Commission's the intention to phase the work to ease consultation.
35. We fully expect development of the Input Methodologies will take varying amounts of time anyway.
36. Our expectation is that the consultation on the Input Methodologies will require more steps than the stylised illustrations in Figures 4.1 and 4.2 suggest. It is likely some aspects of the Input Methodologies will be more complex to develop and/or contentious, and this will warrant additional consultation.
37. The Commerce Commission's consultation on emerging technology in the Part 4 Input Methodologies Review is a good example where additional consultation was needed because the subject matter was contentious and important to stakeholders.

PROGRESSING SOME DRAFT OR FINAL METHODOLOGIES EARLY [Q2, Q25 AND Q26]

38. We think question 2 asks the wrong question.⁴
39. There are practical issues relating to how complex the Input Methodologies will need to be, the extent to which existing precedent can be utilised versus green or brown-field development, and the extent to which the Input Methodologies or elements of the Input Methodologies may be contentious. These can all impact the amount of time it will take to progress each of the Input Methodologies and which should be progressed earliest.
40. The fibre WACC Input Methodology is an example where Input Methodology development should be straightforward. The application of the Part 4 WACC Input Methodology, with 50th percentile WACC, is already well understood under the Telecommunications Act.
41. We anticipate the Cost Allocation Input Methodology will be substantially more complex to develop than the corresponding Part 4 Cost Allocation Input Methodologies. There will be additional complexity due to the existence of multiple regulated fibre services, copper and fibre being regulated under different parts of the Telecommunications Act, and the need for the Commerce Commission to promote competition.
42. The promotion of competition purpose is directly relevant to the Cost Allocation Input Methodology, as was evident from the statutory review of the Part 4 Input Methodologies. There was substantial debate about the impact Electricity Distribution Business involvement in emerging technology could have on competition, particularly if loose cost allocation rules were exploited to artificially raise the regulated business's costs, and to enable the regulated business to subsidise other activities.

⁴ Q2: What input methodologies (if any) could be progressed to draft or final decisions earlier to provide more certainty to stakeholders on the new fibre regulatory regime?

43. Chorus appeared to attempt to downplay the importance of the Capital Expenditure Input Methodology at the December Workshop. A key design decision in the transfer of the Part 4 price control regime to Part 6 of the Telecommunications Act was to adopt the provisions which apply to Transpower. The electricity transmission Capital Expenditure Input Methodology is large and complex, reflecting the importance of ensuring only prudent and efficient investment takes place.
44. If the Commerce Commission were to contemplate a more permissive arrangement, which Chorus seems to be advocating, it could potentially have broader implications than just for telecommunications. It could set precedent for what investments should be accepted under the Default Price-Quality Paths (DPPs), rather than requiring a CPP application. The potential First Gas Whitecliffs realignment project could be a relevant example.
45. There isn't presently a Quality Dimensions Input Methodology under Part 4 so the development of this Input Methodology will require green-fields thinking. We fully expect the Quality Dimensions Input Methodology will also be more complex, and require more detail, than would be the case under Part 4, given the problems with Chorus' provisioning of fibre services to individual premises.
46. While we support development of the Input Methodologies on a staggered or phased basis, we don't necessarily expect the same for the final determinations.
47. While Chorus wants certainty about what its Regulatory Asset Base (RAB) will be and wants the RAB Input Methodology to be progressed ahead of some other Input Methodologies, we would not be comfortable with the Commerce Commission making an early determination of any particular Input Methodology. The Commerce Commission will need to consider how each of the Input Methodologies interact and the implications of one Input Methodology for other Input Methodologies.
48. The reality is, as the Commerce Commission has explained under Part 4, and now in the fibre regulation consultation, regulatory certainty is something that develops over-time.

THE NEW PURPOSE OF “PROMOTION OF WORKABLE COMPETITION” IS A KEY ELEMENT OF THE NEW REGIME [Q4]

49. When the Part 4 Commerce Act provisions were transferred to the new Part 6 Telecommunications Act, a number of enhancements and refinements were made.⁵ One of the enhancements was the inclusion of the section 166(2)(b) purpose for “*promotion of workable competition*”. This addition was particularly notable given how little change was made to the Part 4 section 52A purpose in the new section 162, or to the other Part 4 purposes that were transferred over.
50. The section 166(2)(b) purpose is deliberately broad referring to “*telecommunications markets*” and “*telecommunications services*”, whereas the section 162 purpose is limited to “*markets for fibre fixed line access services*”. We welcome the Commerce Commission’s “*recogni[tion] that s 162 requires us to focus on the long-term benefit of FFLAS end-users, while s 166(2)(b)*”

⁵ There have been suggestions some of these changes be mirrored in amendment of Part 4.

requires us to consider the long-term benefit of telecommunications services' end-users more generally".

51. We note Court precedent that sub-parts (a) to (d) of section 52A of the Commerce Act have equal status. Where the purpose of promoting competition is relevant it has equal status to the purpose of promoting outcomes consistent with workably competitive markets.
52. As the Commerce Commission notes "*Section 166(2)(b) ... stands alongside our obligation to give effect to the s 162 purpose statement*" [emphasis added], and more formerly:

Section 166 does not establish a hierarchy between the promotion of the two outcomes in s 166. Where we consider that the promotion of competition is relevant, we must strive to make the decision that best gives, or is likely to best give effect, to both the promotion of outcomes consistent with workable competition for the benefit of end-users of FFLAS under s 162, and the promotion of competition in telecommunications markets for the benefit of end-users in those markets under s 166(2)(b).

53. We question the Commission's expectation that "*in practice the s 166 objectives will generally be met for most of our decisions if they promote the s 162 outcomes*". By way of analogy, the statement is equivalent to suggesting it would be fine to replace the Mona Lisa in the Louvre with an imitation or reproduction. Promoting outcomes that replicate competition is distinct from promoting actual competition, and should only be applied where competition is not possible. Replicating competitive market outcomes can be expected to be inferior to actual competitive market outcomes.
54. We query the "*preliminary view*" on interpretation of the purpose statements as focussing on: "*promoting workable access in telecommunications markets for the long-term benefit of end-users to the extent that we consider it relevant*" [emphasis added]. While access is an important and necessary pre-condition for "*promotion of workable competition*" in network utility sectors we consider it to be no more than an example of where Part 6 regulation is important for promotion of competition.
55. Vocus agrees though that the Commerce Commission will "*need to exercise our judgement on a case-by-case basis when we are making our decisions to best give effect to [the purpose statement] provisions*". This includes making decisions about the extent to which "*promotion of competition*". The Commission's statement is relevant to all elements of the Input Methodologies, and other aspects of the new regulatory regime.

THE RELEVANCE OF PART 4 OF THE COMMERCE ACT TO PART 6 [Q6, Q23 AND Q24]

56. Vocus welcomes the Commerce Commission's commentary about the potential precedent value of some of the Part 4 Input Methodologies.
57. We agree the Commerce Commission is "*able to draw on our experience of regulation under Part 4*" and "*The High Court's detailed examination of input methodologies for electricity distribution and transmission, gas pipelines and airports in the merits appeal of the Commission's December 2010 Part 4 input methodologies (IM merits appeal) also assists us to understand the purposes, functions and operation of the regulatory tools in the Act. This is*

because Parliament has made a conscious decision to base the regulatory tools in Part 6 on the existing regulation in Part 4”.

58. We would like to develop a fuller understanding of the Commerce Commission’s views about its experience with the Part 4 Input Methodologies, and practical issues with elements such as IRIS, and regulated supplier’ proposals, as the development of the fibre Input Methodologies is progressed.
59. There are a number of industry-specific differences between airports, electricity, gas and fibre, which we anticipate will drive different outcomes in the regulatory settings. One of the main differences is the existence of substitute services for fibre.
60. In terms of the Part 4 and Part 6 legislation one of the differences is the purpose to promote competition. We expect this will be very important for the development of the Input Methodologies.
61. Even if there were no industry-specific or legislative differences, the experience of developing and operating Part 4 Input Methodologies and repeating the exercise when developing Input Methodologies for fibre, will inevitably result in the Commerce Commission’s thinking and approach evolving. Most people will do things better the second time round. What is important is that the Commerce Commission is open and transparent about the approach it is taking, including the reasons for exercising the judgements needed In developing the Input Methodologies.
62. The development of the Part 4 Input Methodologies appeared to be influenced by the legislative provision that Input Methodologies were the only part of the regulatory regime which were subject to Merit Appeals.
63. One of the outcomes of the Merit Appeal challenges, and subsequent High Court decision, was that it confirmed the approach the Commerce Commission had adopted and took a lot of contentious matters ‘off-the-table’. This has helped provide greater regulatory certainty which was evident from the subsequent statutory review of the Input Methodologies.
64. Our view is that this experience should provide the Commerce Commission with confidence to adopt a more prescriptive approach where appropriate, with more detail methodological contained in the Input Methodologies, when it develops the fibre Input Methodologies.

THE KEY ECONOMIC PRINCIPLES FOR THE FIBRE INPUT METHODOLOGIES [Q7 AND Q8]

65. Vocus is comfortable with the three economic principles the Commerce Commission has applied under Part 4 but would like to see them expanded (see below). The key test will be how they are applied, and the implications of industry specific differences.
66. Real financial capital maintenance does not mean a guaranteed return, as the Commerce Commission has made clear. When the real financial capital maintenance principle is applied the Commerce Commission should consider the interaction of the principle with:

- (i) the principle of allocating risk to the party that is best able to manage it. For example, what is the extent to which any losses Chorus has incurred in the roll-out of the UFB network a consequence of its own actions, and its UFB bid?; and
- (ii) the application of a revenue cap for fibre, and the TSLRIC price cap for copper. The combination of the revenue and price caps means provides Chorus with some financial protection from the risk of a slow transition from copper to fibre and weakens the incentives for Chorus to speed up the transition.

67. We see merit in expanding the three principles into six. The Commerce Commission should consider applying the following additional three principles:

- (i) a **competition principle**: *“promote as much competition as practicable, and apply as much regulation as necessary”*.

Vocus would like to see the Commerce Commission adopt the philosophy behind the original Telecommunications Act of *“as much market as possible, and as much government as necessary. This will mean more choice for consumers and more competition in the market”*.⁶ The addition of section 166(2)(b) is a critical and substantial variation from Part 4 Commerce Act.

- (ii) a **prescription principle**: A bright line test or principle for determining the extent to which the Input Methodologies should be prescriptive (or, colloquially, ‘crank the handle’) or flexible, is to consider which elements of price-quality control will require change and the exercise of judgement at each regulatory reset, and which will not.

Elements of the fibre price-quality regulation which will require change and the exercise of judgement at each regulatory reset should be set on a flexible basis in the Input Methodologies, and any element of the price-quality control that can be operated on a ‘set and forget’ basis (at least over the Input Methodologies’ 7-year statutory review cycle) should be incorporated into the Input Methodologies on a prescriptive basis.

This may include additional Input Methodologies which sit outside the minimum set of Input Methodologies required by section 176.

- (iii) a **proportionate regulation principle**: Consistent with *“promote as much competition as practicable, and apply as much regulation as necessary”*, the larger the problems, or potential problems, with regulated supplier (Chorus’) practices the broader the scope and detail in the Input Methodologies will need to be. (See the discussion below on the Quality Dimensions Input Methodology.)

THE COST ALLOCATION INPUT METHODOLOGY NEEDS TO PRECLUDE DOUBLE-RECOVERY [Q10, Q17 AND Q21]

68. We share the concerns raised by 2degrees at the December Workshop about potential for ‘double-recovery’ or double-counting of costs from both fibre and copper revenues.

⁶ <https://www.beehive.govt.nz/release/landmark-telecommunications-act-passed>

69. It will be important to ensure costs allocated to the TSLRIC prices for UBA and UCLL are not also allocated to fibre. If the price setting for fibre allows double-recovery of costs, the Commerce Commission will fail to meet the statutory purpose to limit excessive returns. Chorus' incentives to improve efficiency to increase profitability will also be dampened if it doesn't need to improve efficiency to earn more than a normal rate of return.
70. At the workshop, there was a suggestion double-recovery might not be an issue because Chorus is transitioning from copper to fibre. The reality is that any such transition is uncertain and likely to occur over a period of time. We are aware, for example, that Chorus is investing in improvements to its copper services e.g. upgrading exchanges from ADSL to VDSL.

RISK ASSOCIATED WITH RELIANCE ON CHORUS' PROPOSALS [Q27a]

71. We recognise supplier proposals are used for regulation of Transpower and regulated suppliers seeking a CPP, under Part 4, and that this seems to work well in the electricity sector. We are nervous about potential application to Chorus based on telecommunications experience though.
72. Most recently, the problems with the TSLRIC calculations Chorus commissioned were well documented in the Commerce Commission's UBA and UCLL FPP determinations. We also note that previous experience with then Telecom's calculation of TSO and interconnection costs:

Telecom's incentives to overstate TSLRIC have been borne out by their estimate of TSLRIC which is nearly double that of the Commission's. Because of Telecom's incentives to inflate TSLRIC the Commission should reject Telecom's calculation of the TSLRIC price.⁷

... during the Commission's benchmarking exercise to determine the interconnection rate under the initial pricing principle, Telecom argued that the Commission should maintain the interconnection rate at 2.7cpm. In response to the Commission's section 45 notice of April 2004, Telecom calculated TSLRIC to be 1.86cpm. Yet Telecom subsequently stated that the Commission's rate of 1cpm "is within an acceptable band".⁸

73. We agree with InternetNZ: "*Chorus' incentives are to seek the highest possible cost figures ... Any data provided by Chorus should be thoroughly audited ...*"⁹

CONCERNS ABOUT SERVICE QUALITY

74. The Commerce Commission's view that service quality "*risk may be lower than in other sectors regulated under Part 4 for some aspects of quality, given that the UFB fibre networks are relatively new and have been built to certain specifications under the CIP agreements*", at

⁷ TelstraClear, Submission on the Draft Determination on the Application for Pricing Review for Designated Interconnection Services, 26 May 2005, paragraph 3.

⁸ TelstraClear, Submission on the Draft Determination on the Application for Pricing Review for Designated Interconnection Services, 26 May 2005, paragraph 38.

⁹ InternetNZ, InternetNZ Cross Submission: Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principle, 30 April 2014, page 7.

best, only holds true for the existing Part 4 service quality targets' focus on reliability and outages.

75. There are a lot of other dimensions to service quality in the provision of fibre services where *"a regulated fibre supplier may seek to cut its costs and increase profitability is to decrease quality of service"*. We are seeing this play out in the Chorus' UFB roll-out. The problems with Chorus' subcontracting model for roll-out of UFB to individual premises is well known and have had a lot of publicity.
76. While, the Commerce Commission may not be directly concerned about Chorus' subcontractor's systematic exploitation of workers, and widespread breach of minimum employment standards, including alleged sub-minimum-wage pay etc, what should be of concern are the long waits for installations and shoddy workmanship.
77. This is a very stark example of the incentive for regulated suppliers to increase profitability by reducing service quality (or keeping service quality at a poor level from the start).
78. Vocus is particularly concerned about the risk of a repeat of the copper service performance issues. By way of example, in 2016-2017 Vocus was experiencing a failure rate on copper self-installs of between 20 and 25% of orders. Of these over 2/3rds were a result of issues with Chorus' network records and technician processes and compliance. The remainder were the result of a range of issues including incorrect information from customers.
79. It took almost two years of constant dialogue to get Chorus to change its processes and get its technicians to comply with the new process requirements in order to address these issues. When they did the number of failed installs halved.
80. Throughout this period. Vocus incurred considerable direct and indirect costs including, loss of customer total business, cancelled orders and servicing costs. The SLA penalties on Chorus were, in contrast, insignificant at a few thousand dollars per month, due to low penalties and a high hurdle rate for failures.
81. These are not outcomes consistent with a workably competitive market.
82. Appropriate SLAs need to be established as part of the Quality Dimensions Input Methodology and service quality target setting, with lower breach thresholds and higher penalties in order to provide an appropriate incentives for Chorus to ensure its fibre processes are in order and meet customer expectations.

ANCHOR SERVICES NEED REVISING FOR THE INITIAL RESET

83. The development of revised versions of the Anchor Services, including possibility of additional Anchor Services, is important for the initial reset.
84. We support use of the legislative provisions providing for the Commerce Commission to *"review whether, and how effectively, an anchor service meets the purpose of anchor services"* and to *"recommend a change to the regulations for an anchor service [to] better*

meet the purpose of anchor services in s 206(7)".¹⁰ We agree "Section 166 will also apply when we consider our recommendations".

85. Vocus would like development of revised Anchor Services to be treated as a priority, once the starting Anchor Services are specified in regulation by MBIE. We don't consider the Anchor Service specification MBIE has indicated will be fit-for-purpose when it comes into effect in 2022.
86. The MBIE decision is disappointing as they are well aware of the RSP and end-user view that setting the broadband anchor product at 100/20 Mbps is to create an anchor product that should be irrelevant in the market in 2020-2023.
87. New Zealand invested in a full fibre to the home (FTTH) network that will be capable of providing 1Gb+ per household. Even as far back as the November-January 2017 period, Orcon had over half the new fibre customers sign up for 1Gb plans. New Zealand's GPON network, thanks to technology innovation, will be able to provide 1GB+ to consumers by 2020 with little extra cost to the network operator. Setting the anchor product at a spend of 100/20 will not be sufficient to meet the needs of most consumers and will incent Chorus to recover its allowed revenue from higher speed products with the risk of dampening demand for these products, as occurred in the early days of VDSL.
88. The impact can be seen in the breakdown of Vocus' fibre customer base (see Figure 1). Enable has the lowest price differentials between the planned Anchor Service and higher specification services, and consequently the highest proportion of customers on the higher specification services.
89. Based on Enable's offers, if there was currently an Anchor Service set at Fibre 200 with a price of \$45, [CI] of customers on the Chorus fibre network would be on it rather than [CI], and only a small minority (not the existing [CI]) would be on Fibre 100.
90. Chorus' current \$45 price for Fibre 100 is consistent with monopoly practices of keeping price high and service low. This is not consistent with the outcomes in workably competitive markets and should not be supported by Anchor Service regulation.

Figure 1: Breakdown on Vocus' fibre customers by LFC area and price

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¹⁰ Our preference would have been for the Commerce Commission to have sole discretion over the specification of Anchor Services, and not to have to make recommendations to the Minister.

91. The excessive price differential between Chorus Fibre 100 and 1GB product is likely to be a driver behind Chorus Connect offer, for 1st July to 30th December 2018 of \$150 for every upgrade to the 1GB product.¹¹ The comparison with Enable demonstrates that a lower price differential between the products is a far more effective (though not necessarily as profitable for Chorus) strategy for encouraging uptake of higher quality services (see Figure 2).

Figure 2: Chorus' Connect Offer

Key characteristics of Chorus Connect Offer with bonus credit:

| | BUSINESS | CONSUMER |
|----------|---|---|
| 1 | <p>Grow your connection base Receive base credits for the following new connection orders:</p> <p>BS2 100Mbps+ \$50</p> <p>BS3/a and BS2 SME Max \$200</p> | <p>BS2 100Mbps+ \$50</p> <p>BS2 Consumer Max \$200</p> |
| 2 | <p>Improve your ARPU Receive base credits for the following upgrade and fibre intact orders:</p> <p>Upgrade, transfer with upgrade and fibre intact</p> <p>BS2 100Mbps+ \$50</p> <p>BS3/a and BS2 SME Max \$150</p> | <p>Upgrade, transfer with upgrade and fibre intact</p> <p>BS2 100Mbps+ \$50</p> <p>BS2 Consumer Max \$150</p> |
| 3 | <p>Bonus credit to Grow your base Receive bonus credit for the following new connection orders:</p> <p>BS2 30Mbps+ \$50</p> | <p>BS2 30Mbps+ \$50</p> |
| 4 | <p>Make it easy Additional OPERATIONAL SUPPORT</p> <p>Bulk Migration Service Wrap for fibre upgrades</p> | <p>Managed Fibre Campaign Process</p> |

92. We do not consider the Anchor Services will achieve the purpose of “act[ing] as an appropriate constraint on the price and quality of other FFLAS variants” if they are out-of-date.
93. The less attractive/more out-of-date the Anchor Services are, the less effective they risk being in acting as an anchor. The Anchor Service concept relies on the discipline of Chorus knowing if it sets the price for other services too high, end-consumers will revert to the Anchor Service.
94. In simple terms, the larger the gap between the Anchor Service and the 1GB service the larger the mark-up Chorus will be able to impose. This would only serve to hold back widespread adoption of higher speed internet services in New Zealand, which would not be to the long-term benefit of end-users.

¹¹ <https://sp.chorus.co.nz/product-offer/chorus-connect-offer>