

21 December 2018

Vanessa Howell
Head of Fibre Regulation
Commerce Commission
Wellington 6140

By email: TelcoFibre@comcom.govt.nz

Dear Vanessa

New regulatory framework for fibre

We welcome the Commerce Commission's invitation to comment on the proposed approach to the new regulatory framework for fibre.

Proposed process

The early engagement with stakeholders, clear mapping out of the process for development of the fibre Input Methodologies (IMs), explanation about the extent that past decisions may act as relevant precedent, and establishment of an Expert Advisory Panel, all reflect good regulatory practice.

Cross-sector precedent

In our previous submission, we emphasised that it would be helpful for the Commission to be clear about the extent to which differences in approach to that taken under Part 4 of the Commerce Act reflect industry-specific and legislative differences. We are pleased the Commission has been explicit about the interlinkages between the new fibre regime, and both Part 4 and previous copper pricing precedent.

The Commission has qualified the extent cross-sector consistency can be expected noting "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 amended Act, and cannot simply import the approach we have adopted under Part 4".

It will be important that when the Commission exercises different judgements in its Part 6 fibre decisions, to those previously adopted for Part 4 electricity, it is clear about the reasons why. We anticipate the Commission could reach differing conclusions or judgements based on new evidence and perspectives brought to the table by stakeholders in the telecommunications sector, and from the benefit of being able to take a fresh perspective subsequent to the development and review of the Part 4 IMs.

Potential implications of the new fibre regime for Part 4 reform

We will follow with interest how some of the legislative differences between fibre and electricity, might impact on the Commission's regulatory decisions. For example, we will be interested in how

the additional purpose of “promotion of workable competition in telecommunications markets” impacts on the Commission’s decisions. The Commission also noted that unlike in electricity “The amended Act will give us sole responsibility for both revenue allowances and pricing methodologies”, but didn’t elaborate on the potential implications of this difference.


Testing existing arrangements in a new regulatory setting would help clarify whether consumers’ long-term interests would be promoted by putting both revenue allowance and pricing methodologies under the umbrella of Part 4 regulation, as some of the submissions to the Electricity Price Review, including our own,¹ have suggested.

Concluding remarks

We look forward to the Commission’s development of IMs and the new regulatory framework for fibre.

Operation of Individual Price-Quality Path (IPP) type regulation in both Part 4 (Transpower) and Part 6 (Chorus) should be complementary. Decisions in one sector should provide useful precedent for the other and help enhance regulatory certainty. We will be particularly interested in the development of the Chorus’ Capex IM, because the process for individual investment approval has, up until now, been unique to Transpower only.

Yours sincerely



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¹ [Transpower submission to the Electricity Price Review First Report](#), 23 October 2018