

# One NZ submission on fibre fixed line access service deregulation review – reasonable grounds assessment draft decision

24 September 2024

## Introduction

1. We welcome the opportunity to comment on the Commerce Commission's (**the Commission**) draft decision on whether there are reasonable grounds to start a deregulation review of one or more fibre fixed line access services (**FFLAS**) under section 210 of the Telecommunications Act (**the Act**). We acknowledge that the Commission is required to assess whether reasonable grounds exist to carry out a deregulation review before the start of each price-quality (**PQ**) regulatory period under the Act. We also note that the Commission has a responsibility to manage the stock of regulations, and it is part of good regulatory practice to consider whether existing regulations continue to serve a purpose.

## One NZ position

2. One NZ supports the Commission's draft decision that there are no reasonable grounds to start a deregulation review of FFLAS. We note that the Commission has made a change to the trigger for 'reasonable grounds' in the updated assessment framework, so that a review of FFLAS may be started 'where the information before us [the Commission] is objectively sufficient to leave us [the Commission] with a view that it is likely that the services should no longer be regulated (or should not be regulated by PQ regulation, as the case may be) in order

to promote the purpose in section 162 and, where relevant, workable competition under section 166(2)(b).<sup>1</sup> We agree with this threshold.

3. We note that Chorus has called for the threshold for starting a deregulation review to be lowered.<sup>2</sup> We agree with the Commission that ‘a threshold based solely on the emergence or expansion of alternative networks offering services that may represent a competitive constraint on services is not appropriate. The threshold should not be so low as to risk unnecessary reviews.’<sup>3</sup> The Commission is right to conclude that the threshold should not be lowered, as it needs ‘to strike a balance between the costs and regulatory uncertainty of reviewing regulation, and the costs of allowing regulation to exist longer than necessary’ under section 210 of the Act.<sup>4</sup>
4. We agree with the Commission’s assessment of each FFLAS category, including the geographic area descriptions that the Commission has used.
5. In regards to Bitstream PON services, we agree with the Commission’s decision to carry out the assessment using a single product market for broadband services rather than a separate market for lower speed broadband services as has been proposed Chorus.<sup>5</sup> While some competition from alternative access technologies exists, it is limited, as demonstrated by the fact that the market share of fibre broadband within each of the regulated provider’s network boundaries remains at 75% or higher.<sup>6</sup> The same applies for Point to Point services: while some competition exists in small geographic pockets, it is limited, and Chorus remains a monopoly provider of these services in most parts of the country.

---

<sup>1</sup> Fibre fixed line access service deregulation draft decision, the Commerce Commission, 27 August 2024, p. 67

<sup>2</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0023/345092/Chorus-public-submission-on-deregulation-draft-assessment-framework-Feb-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0023/345092/Chorus-public-submission-on-deregulation-draft-assessment-framework-Feb-2024.pdf)

<sup>3</sup> Fibre fixed line access service deregulation draft decision, the Commerce Commission, 27 August 2024, p. 68

<sup>4</sup> Ibid.

<sup>5</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0023/345092/Chorus-public-submission-on-deregulation-draft-assessment-framework-Feb-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0023/345092/Chorus-public-submission-on-deregulation-draft-assessment-framework-Feb-2024.pdf)

<sup>6</sup> Fibre fixed line access service deregulation draft decision, the Commerce Commission, 27 August 2024, p. 42

6. Furthermore, Chorus has called for the Commission's assessment framework to take into account planned and foreseeable network developments, such as 5G FWA.<sup>7</sup> The Commission is right to conclude that while 5G FWA represents a step-change in network capacity and end-user experience, it is at this stage unclear what impact this service will have on the market<sup>8</sup> and so it would not be justifiable to start a deregulation review based solely on the potential competitive constraint that 5G FWA might have on providers of fibre services in the future.
7. As noted in our previous submission, there is no credible prospect of Chorus relinquishing substantial market power (**SMP**) in the foreseeable future. It remains an inevitable trading partner for retailers in those areas where it operates, including those areas where Chorus' wholesale services and other access technologies are both present. Chorus' position as an inevitable trading partner for retailers means that even if its FFLAS services faced genuine competition from alternative technologies in some geographic areas, this would not operate to constrain Chorus' SMP or preclude it from developing services specifically addressed at countering competitive technologies. Given that Chorus and the LFCs continue to maintain a monopoly position in parts of the country where they operate, the PQ and ID regulations under Part 6 of the Act continue to serve the intended purpose of protecting end users of fibre services from excessive price rises and service quality deterioration, while also supporting competition in the telecommunications market.
8. Please contact the following regarding any aspect of this submission.

---

<sup>7</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0023/345092/Chorus-public-submission-on-deregulation-draft-assessment-framework-Feb-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0023/345092/Chorus-public-submission-on-deregulation-draft-assessment-framework-Feb-2024.pdf)

<sup>8</sup> Fibre fixed line access service deregulation draft decision, the Commerce Commission, 27 August 2024, p. 25

[Redacted]

*Senior Public Policy Advisor*

[Redacted]