



Copper services investigation approach paper

Submission | Commerce Commission

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Executive Summary

Thank you for the opportunity to provide feedback on the Commission's proposed approach to the copper services review (**the draft**).

The proposed approach to the investigation draws from previous Schedule 3 reviews of Schedule 1, and competition reviews undertaken by overseas authorities.

However, the s69AH investigation anticipates a broader range of considerations than seen in Schedule 3 reviews to date, which have focused on whether a service should be omitted from the Act. A s69AH investigation can extend to whether telecommunications services should be added or omitted from the Part, or an existing service amended.

Further, whereas typical Schedule 3 investigations consider deregulation in light of evidence of increased competition which would not be impaired as a result of omitting a regulated service from the Act, this investigation is unique in that Chorus plans to close the copper network by 2033. The implication of this is that any removal of copper regulated services from the Act should be expected to accelerate removal of copper services from the market and/or declining copper service performance. Chorus has indicated that it is minimising investment in the copper network, and so we expect to see reduced copper service quality and availability over time.

In our view, consideration of the long-term benefit of end users will be a key part of the investigation for any withdrawal of copper services and in anticipation of future market deregulation. Protecting end users as the context and regulatory framework changes is an important part of the review.

Accordingly, we recommend that the Commission capture, in addition to service availability, information relating to copper performance and end-user protections early in the project timeline.

In terms of the discussion paper framework, we recommend that the Commission also further consider:

- Backhaul services separately to ensure they remain fit for purpose.
- End-user outcomes at a premises level as – with the widespread use of address checkers – some end users may have fewer service options, and
- Practical regulatory framework and implementation issues as, for example, other regulatory instruments rely on the regulated services.

Introduction

1. Thank you for the opportunity to provide feedback on the Commission's proposed approach to the copper services review (**the draft**).
2. These are important services for Spark and our customers. We continue to use Chorus copper services to provide broadband and voice services to our customers¹. The Chorus TSO network input and backhaul services are important inputs to our regulated standard residential telephone service. We support the Commission being mindful of the wider regulatory and competitive landscape, including the TSOs, STDs and existing Codes, as part of its review.
3. As noted in the paper, we have seen a decline in copper demand as many customers adopt new technologies with better service performance needs, such as wireless broadband. Chorus plans to turn off its copper network in UFB areas by the end of 2026, and completely withdraw all copper-based services by 2033. We agree the Commission should consider how regulated copper services are changing, to reflect the market and ease the transition for impacted customers.
4. The Commission has invited feedback on:
 - a. The proposed economic framework
 - b. How it intends to apply that framework; and
 - c. Any other considerations that you may deem relevant.

The economic framework

5. The Commission's proposed approach draws from previous Schedule 3 reviews of Schedule 1 services, and competition reviews undertaken by overseas authorities. The Commission plans to apply a competition framework by defining the relevant services, identifying alternatives in a geographic context, and assessing competitive constraints. It would then assess the costs and benefits of potential amendments against a counterfactual.
6. We agree that a competition assessment is an essential step for understanding the nature of the market and wholesale demand, particularly in a deregulatory review. If sufficient meaningful competitive alternatives exist to the regulated inputs, then the effect of any supply reduction by the regulated entity could be sufficiently addressed by other providers.
7. The Commission has applied this framework to Schedule 3 reviews in the past. However, past regulatory reviews² are mandated periodic reviews that focus on whether the Commission should recommend omitting a service from the Act. The s69AH investigation anticipates a broader range of considerations – i.e., whether telecommunications services should be added or omitted from the Part, or an existing service amended – and is set within a unique context.
8. The investigation should also establish whether the current regulated services remain fit for purpose in the current environment. Chorus has indicated it is minimising investment in copper network and plans to close the copper network by 2033. Access seekers and end-users likely face declining service availability and performance. Further, we expect that any deregulation will lead to the withdrawal of the services.

¹ With 54,000 copper broadband and 69,000 POTS/ISDN connections

² Part 1 of Schedule 3 requires the Commission consider whether there are reasonable grounds to consider omitting a service from the Act no less than every five years

9. Therefore, in our view, consideration of the long term interests of end users and suitable regulatory protections will be key to reflect current and future market context. The investigation should consider, for example:
 - a. the implication of Chorus minimising investment in the copper network and what this means for end users;
 - b. the levels of service performance end users can expect and under what circumstances Chorus might withdraw a copper connection; and
 - c. what the process should be for the withdrawal of regulated service lines.

The answers to such questions will inform whether changes to Schedule 1 are required for this purpose.

10. Further, the copper Standard Terms Determinations (**STDs**) have been frozen for several years and may require amendments. While the draft foreshadows an STD review process following the Schedule 1 review, the reverse may also apply, i.e., Schedule 1 may be amended to facilitate a beneficial change to the STD not adequately covered by the existing service description. While we believe the service description is already flexible enough to provide for asset management and end-user protection obligations, for example, given the unique copper context discussed above, it is possible that these additional obligations may need to be clarified by a Schedule 1 amendment.³
11. Accordingly, we recommend that, in the addition to gathering information relating to competitive constraints as proposed, the Commission should consider what information is necessary to determine whether the current service is fit for purpose and in end user interests. For example, information relating to:
 - a. How the regulated provider is managing the network, i.e., Chorus copper network strategy, investment in - and operation of - the copper network in practice, and policies for removing copper lines.
 - b. Whether the current regulated service is delivering the expected outcomes, i.e., what service performance is being seen and what is expected over time, and
 - c. Whether there are sufficient end user protections in place for the operation and withdrawal of service.

Applications of the framework

In terms of the discussion paper framework, we recommend that the Commission also consider:

- a. Associated backhaul and co-location services separately. The draft proposes to focus on UCLL and UBA services on the basis that backhaul and co-location services can only be taken with the customer access. However, backhaul and co-location services may be subject to different competitive constraints or require specific protections as the market context changes.
- b. Geographic market granularity further. The draft proposes to define the geographic dimension of the market based on whether alternative networks are present. While we agree that a level of extraction is necessary, the Commission will likely need to undertake a premises-by-premises analysis to understand the relevant market

³ S66 provides that a service may be amended to provide any applicable conditions or additional matters that must be considered regarding the application of section 18

definition. Customer options can vary on a premises-by-premises basis, for reasons such as differences in address checkers and possible coverage blackspots. The Commission should also be mindful of end users with fewer options.

- c. The regulatory framework and practical regulatory implementation issues. MBIE is currently considering expanding the specified fibre area construct into rural areas. We note that deregulating on a service or geographic basis may be difficult to achieve in practice, and/or may undermine other obligations such as under the TSO. For example, deregulating on a piecemeal basis (leaving pockets of competition) may leave Chorus or RSPs with a service that makes no sense or may undermine TSO services.

[End]