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Ms Tricia Jennings
Project Manager, Regulation Branch
Commerce Commission
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Dear Ms Jennings,

Investors Mutual Limited (IML) is an Australian based fund manager with over AUD 5.5 billion that it manages on behalf of a wide range of investors including many retail investors. IML takes a long term approach to investing and we look to invest in companies which generate a high level of recurring income, have competent management, and that can grow their earnings and dividends over time.

Since our inception in 1998, we have been a long term shareholder in many New Zealand listed companies, including Sky City, Fletcher Building and Chorus. We are attracted to New Zealand because of its relatively stable economy, and in the past, its generally predictable and transparent legal system. However, recent regulatory uncertainty has threatened this reputation.

The following is our cross submission to the UCLL and UBA FPP price review process. It outlines an investor's perspective on the key issues of trenching costs, and backdating.

A Fair Go – That is all investors ask.

13-10 to England with 10 minutes left to play and another RWC final looks to be slipping away. The increasingly desperate and frustrated AB's are throwing everything they can muster at an English team that on this day seems to have gained an extra player! With 80,000 screaming fans in the crowd egging on an increasingly one-sided contest, the ref feels no compunction. Every time the All Blacks come within metres of the try line the ref blows his whistle and picks out another confused AB. And then the ultimate bad decision: "What, me Sir? …." "Yes, you thought you had the ball grounded over the try line, but now I think about it, I saw Richie steal the ball 3 minutes ago from an offside position. So let's go back up field and restart from there!"

Can you imagine the collective outcry from every New Zealander if a supposedly independent referee was to make so many decisions blatantly favouring England over New Zealand, just because he is in a stadium surrounded by thousands of fans screaming for England?

As in sport, regulated businesses have a clear set of rules which govern how the game is played. Industry players look to the regulator to apply these rules fairly. However, the application of telecommunications regulation in New Zealand these past three years has left investors confused and feeling somewhat like Kiwi fans watching a one-sided footy game.

We keep asking, "When will we get a fair decision, Sir?"

In late 2012 and throughout 2013, Chorus received decisions which saw the price they can charge for accessing their copper network slashed from $45 to $34 per month. This saw the company stop dividends, make special arrangements with their banks to reduce pressure on their debt covenants, and cut investment in everything except the essentials. Even proactive maintenance went on the backburner.

Meanwhile, they continued to invest, building out a world leading fibre network. This fibre network will form the foundation stones on which future New Zealand companies – the likes of Xero and TradeMe - are built. Would Xero have been on the way to building a global leading accounting software business without a world-class internet network in their home country?

For several years now we have patiently been waiting for the regulator to apply the current rules of the telecommunications act, but the latest indications are not encouraging. Recently the regulator indicated that they will allow Chorus to recover $38 per metre for digging a trench when the true cost is around double that. This is supported by an independent contractor who has submitted the regulator's costs don't accurately reflect the New Zealand environment.

Further confounding is the decision not to allow backdating. Bizarrely, the regulator has ruled that Chorus has to charge broadband retailers $34 per month from December last year until they make their final price decision, now delayed until December 2015, but Chorus cannot recover the difference if the regulator finds the correct price is higher. Yet, Spark and other retailers have already increased their charges for consumers. Spark also announced that they would be paying a special dividend this year that, oddly, equates to roughly the same amount of money that Chorus would be out of pocket if backdating is not enforced! Fans have not forgotten that in another match back in 2006 the regulator was firmly of the view that Telecom had to backdate pricing differences.

The referee's decisions to date have left many investors believing they are just seeking a particular outcome as opposed to applying the rules objectively. Network investors want to know the networks they are funding can deliver a reasonable return.

Australia's experience to date with the costs of the National Broadband Network suggest that New Zealand was ahead of the game in splitting Telecom and having the operator of the existing network involved in the fibre rollout. Australia, though, has been ahead of New Zealand in the rules it has implemented for network investment (not bad, given we invented under-arm bowling!). We are encouraged by the New Zealand government's recent announcement that it will look at applying the widely accepted utility-style "building block" model to the telco sector, but that is potentially not until 2020. Investment does not happen when all sides are not treated equally.

Come on, Ref, what do we have to do? Kick every decision upstairs to the TMO?

One sided games only see fans desert to support other codes, as 20% of the retail investors in Chorus have already done. That's a poor result for future broadband investment.

Yours sincerely,

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Portfolio Manager

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