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## TRUSTPOWER'S CROSS SUBMISSION ON FIBRE REGULATION EMERGING VIEWS

### Introduction

The Commerce Commission (**the Commission**) has begun implementing the new regulatory regime for fibre fixed line access services (**FFLAS**) as per Part 6 of the Telecommunications Act 2001 (**the Act**). Following the receipt of submissions from interested parties on the Commission's proposed approach to developing the new regime, as set out in its 21 May 2019 *Fibre Regulation Emerging Views* consultation paper (**Emerging views paper**), the Commission has now issued a request for cross-submissions.

This cross-submission provides Trustpower's views on the matters raised in other party's submissions. Due to the short timeframes for preparing this response we have focussed on those matters that we consider are most worthy of further consideration by the Commission.

### Trustpower's views

Trustpower wishes to thank the Commission for the opportunity to provide a submission on its Emerging views paper for the new fibre regulatory regime, including the input methodologies (**IMs**).

Trustpower is a multiproduct retailer that offers a bundle of electricity, gas and telecommunications services to its customers. We currently retail to around 267,000 electricity connections, 96,000 telecommunication customers and 39,000 gas customers. We will also be participating in both the mobile and fixed-wireless markets in due course.

Our submission is structured to present our views with respect to:

- the consultation process and enabling a consumer voice in decision making (section 1);
- cost allocation (section 2);
- the quality IM (section 3); and
- the initial losses calculation (section 4).

## Section 1: Consultation process and consumer voice

The design and implementation of the Fibre IMs involves consideration of a large number of issues, with a high degree of complexity. Trustpower agrees with the concerns expressed by 2degrees regarding the need for a consultation process on the draft IMs that ideally staggers the issues and provides a longer timeframe for parties to respond, including for cross submissions [pages 2-3]. The approach of releasing a very lengthy omnibus consultation paper is unlikely to be conducive to receiving comprehensive high-quality submissions from all sides of the debate, as is evidenced by the imbalance of the volume of submissions received on the Emerging views paper. We support the Commission in further considering this important matter, acknowledging the tight timeframes it has to establish the new regulatory regime for fibre.

We are supportive of the Commission's efforts to include a consumer voice in its consultation process through the use of a consumer focus group and a summary submission. One of the specific suggestions mentioned in the focus group summary submission is that capex proposals should be published in a transparent, user-friendly manner [paragraph 28]. We consider that this is important and note that similar views have been expressed by retailers in respect of capex plans in the electricity sector (eg, as set out in Asset Management Plans).

We note that Chorus proposes to exclude the consumer consultation process from its first price-quality proposal due to time constraints [page 24]. We have concerns, not only with this specific recommendation, but also that this may be indicative of the lesser importance that may be put on consumer interests by Chorus compared to their other objectives. As outlined in our submission on the Commission's emerging views, we consider it is important that the promotion of competition and the interests of consumers are front of mind when making IM decisions - which we suggested may be best achieved through a specific competition and consumer principle. To the extent that the Commission considers that the time available for preparing the price-quality proposal in the first regulatory period limits the potential for consumer consultation, we believe that Chorus should at least be required to consult with RSPs.

## Section 2 - Cost allocation

A number of submissions highlighted the importance of ensuring that there is a robust process for determining cost allocations and we agree. For example:

- 2degrees recommended that the Commission should adopt more prescriptive (and restrictive) Cost Allocation and RAB IM rules and expressed the view that double recovery for copper-fibre needs to be addressed [page 2]; and
- Spark stated that the proposed approach to cost allocation leaves significant discretion with regulated providers [paragraph 34], and also recommended that regulated providers should be required to prepare a cost allocation statement that could be approved by the Commission as part of the periodic regulatory determination process [paragraph 36(d)].
- Vector makes the point in its submission, supported by evidence, that Chorus competes more aggressively in Local Fibre Company (**LFC**) areas [section 2]. This is a good example of the importance of ensuring that there is adequate oversight and scrutiny of cost allocation decisions. Chorus clearly has the incentive to allocate less cost to services/areas that have greater levels of competition and more costs to those that do not. This implies that the Commission's proposed non-prescriptive approach to cost allocation deserves further attention.

We reiterate the view in our prior submission and accompanying Link Economics report that cost allocation has the potential to have a significant impact on competition and consumer outcomes. Even if the Commission does not consider that a prescriptive approach is workable, it should examine alternatives such as the suggestions made by Link Economics and Spark of a cost allocation statement that is subject to consultation and approval by the Commission.

### Section 3: Quality IM

After reviewing other party's submissions, we continue to agree with the Commission's emerging view that CEPA's level 3 detail is appropriate for the Quality IM and that CEPA's suggested quality dimensions should be included in the IM.

#### 3.1 Role of quality regulation in the price quality path

Chorus makes an important point in its submission that the price-quality trade off involves consideration of *"the quality that consumers are willing to pay for"* [paragraph 243]. We agree but note that it is important to keep in mind that consumers may have a clearer pricing view on some quality dimensions than others. For example, customers are likely to have a better view of the value of availability and performance given they are more front of mind when making general decisions around fibre service purchases, than other dimensions such as ordering, provisioning and switching.

However, this does not mean that ordering, provisioning and switching are any less important to the overall consumer experience. We suggest consideration will be required to ensure that "false negatives" etc. are avoided when seeking input from consumers around the trade-off between price and quality.

Chorus also makes a point that quality and expenditure are causally linked [paragraph 264]. While we agree, we wish to reinforce that as with all expenditure, any cost in meeting a particular quality standard should be efficiently incurred and gold plating should be avoided. We also note that input from customers on major CAPEX will also be a valuable determinant of where the price-quality trade-off should be made and ensure alignment with customers' expectations.

#### 3.2 Commercial context and market dynamics

Chorus refers to the risk that rapidly changing consumer demands may be constrained by the quality standards [paragraph 246] and goes on to state that excessive constraint is inconsistent with real FCM [paragraph 247]. However, we have doubts that this is a major concern.

The quality standards are specific in the sense that they apply to particular measures, but generic in that they could apply to numerous variants of a layer one or layer two service as we understand it. Therefore, we do not consider that the quality standards, of the nature being considered by the Commission, to be inconsistent with the purpose statement or with the real FCM principle. We therefore believe Chorus is overstating its concern about an overly broad scope of quality regulation being *"at odds with the nature of BBM regulation and puts service differentiation at risk"* [paragraph 249].

We do not see how Chorus would be constrained by the quality standards in its ability to differentiate services on any normal measure [paragraph 249.3; 275]. For example, if Chorus wished to offer a more responsive fault repair service, they could do that. It is true that Chorus would be limited in providing an inferior fault repair service, but we do not believe that flexibility is necessary in this area of the new regime.

We also note that there appears to be some confusion in that Chorus regards maximum speed as a quality aspect, whereas we see speed as an element of a service description [paragraph 249.3; 290.2]. This may be why they are concerned about flexibility, as we appreciate that Chorus can offer different speeds under the new regime.

The value of the table 3 quality standards<sup>1</sup> is that they were the result of commercial negotiations between Chorus (or with the RSPs) and Crown Infrastructure Partners at the beginning of the UFB initiative. Imperfect as they may be, they stand as a reasonable representation of an appropriate set of quality measures.

That being said, we consider it is appropriate for there to be a review of these measures, but suggest that this should be through a Commission-led consultation process, rather than through the TCF as suggested by Chorus and by Spark [paragraphs 67; 70]. We do not consider a TCF led process would arrive at a reasonable outcomes, given their structure tends to favour the interests of the larger industry players.

On the question of the degree of control that Chorus and LFCs have over quality aspects, we consider they should be responsible for any acts or omissions of their third party contractors (and their contractors, etc), as control is exerted through contractual provisions.

### **3.3 Content of the quality IM**

#### **3.3.1 Detail in the quality IM**

We largely agree with the Commission's emerging view that level of detail in the quality IM should be at CEPA's level 3. We believe there need to be metrics and measures for the most significant quality dimensions to provide a degree of certainty on these important matters. We also agree with Vodafone that it is important that the level of detail in the Wholesale Supply Agreements (**WSAs**) is retained [page.26].

In our experience there are challenges with provisioning, switching and performance among Chorus and the LFCs which ultimately impact on our customers experience with the fibre network. Given this experience, we propose that these dimensions in particular should have defined quality metrics and measures.

In the case of provisioning, there could be a metric or measure for different connection types so that it could be possible to compare provisioning experience (including as measured by time) across FFLAS providers, while acknowledging some situations are more complex than others (and thus might take longer). We suggest the appropriate connection types to break down results by would be:

- SDU - single dwelling unit (like a house);
- MDU - multi dwelling units (like an apartment); and
- ROW - right of ways.

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<sup>1</sup> As reflected in the Emerging views paper.

Specific measures within the provisioning dimension might be outlined as *“time to provision a service for a SDU will be measured by the number of calendar days from receipt of order to completed connection”*. Within Chorus’s price-quality regulation this could then mean that a standard for provisioning a simple SDU could be outlined as within ten business days (from the time the order lands with the wholesale service provider) whereas for more complex connections it might be reasonable to have a longer time frame.

In the case of the switching dimension, FFLAS providers could have a metric or measure that might be outlined as *“time to transfer a service from one RSP to another will be measured by the number of calendar days from receipt of request to completed transfer”*.

In our view, Chorus should not be responsible for conducting consultations with consumers on quality issues [paragraphs 267.1; 268]. We suggest that Commission would be better placed for undertaking this role and ensuring an independent consumer voice is achieved in the discussion, as has been their approach during this process to date.

We support the Commission in further considering how consultation with consumers around quality matters should be undertaken. This approach may require input from RSPs from time to time given their direct relationship with customers and the level of technical difficulty associated with considering some of the related matters within the new regulatory regime.

We do not accept a “propose/approve” model where Chorus and the LFCs propose quality standards and measures [paragraph 267.1]. Rather, the Commission should set the quality standards and measures.

We also don’t accept Chorus’ position that there should be binding metrics, but no specific measures [paragraph 267.4]. This leaves far too much uncertainty, particularly on the important quality dimensions, and we see little value in flexibility to this extent here, and potentially significant detrimental impacts to customers in terms of overall quality of service [see also paragraph 295].

### 3.3.2 Quality dimensions

Chorus states in its submission that:

*“If the scope of quality dimensions specified goes beyond availability and performance, any other dimensions should be restricted to measures under ID”* [paragraph 273] and that they *“continue to believe that availability and performance are the only dimensions which should be reflected in the quality IM”* [paragraph 290]. Chorus also says that *“other dimensions are controlled by incentives arising from the commercial context or other regulatory instruments”* [paragraph 302].

Availability and performance will be the key ongoing quality dimensions but other aspects of quality, such as provisioning or switching, will continue to be relevant as Chorus deploys its network and into the future. Therefore, we strongly disagree with Chorus’s view that a narrower set of dimensions to be included in the Quality IM would be appropriate. Furthermore, quality dimensions such as ordering or faults are also very relevant for the LFCs.

We generally support Vodafone that the

*“... installation cycle time could easily be categorised under ordering or provisioning, and most performance measures can be categorised as faults, availability, or performance depending on their severity”* [p.27].

However, we would also include switching as a specific category as it is a vital element of the process that deserves more consideration. In our experience it has direct implications for competition. We

strongly disagree with Vodafone's suggestion that the TCF's Customer Transfer Code is adequate at setting requirements around switching [p.27].

As the Commission is aware Trustpower has long held concerns around the efficacy of switching in the telecommunications industry. As a smaller RSP, we are very reliant on well-functioning customer migration processes, for customers typically churning away from larger RSPs. Our experience is that the inconsistency and manual effort associated with the current customer switching processes result in high transaction costs which are a potential barrier for new entrants.

We also consider that current processes can have a range of detrimental impacts on switching consumers, including incorrect and multiple billing, incorrect service transfer, loss of services during transfer and a lack of visibility of the status of a customer transfer, which impacts customer service and undermines consumer confidence in the industry.

These issues will likely be further exacerbated as switching between service types becomes more prevalent (i.e. fibre to fixed-wireless, and back) and in an unbundled fibre context where multiple ONTs may be located as a customer premise. We support the Commission in considering how these impacts can be addressed via measures/metrics specified in the quality IM and any standards specified for Chorus in its price-quality regulation.

### 3.3.3 Assessment of quality aspects

We do not accept Chorus' view that, in the context of other regulatory instruments, the quality regulation in price-quality regulation "*should focus on those aspects best measured on a network-wide basis (i.e. not on an individual service basis)*" [paragraph 244.2; 245]. Also, we do not accept Chorus' suggestion that "*availability is ... better assessed on average rather than on an individual access line basis*" [paragraph 290].

Analysing availability and performance on an individual access line basis enables a level of transparency and accountability that can be hidden when only an average is considered. The risk is that regulation is diluted by an averaging of averages.

We also note that considering availability and performance in this manner risks introducing detrimental quality outcomes for some individual consumers, i.e. where they are connected to the line that has high level of issues during the year, but because the remainder of the network is operating appropriately Chorus still meets its overall requirements and has little impetus to improve the service level for the impacted customer. We have a similar view in relation to Chorus's views on performance [paragraph 290.2].

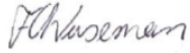
## Section 4: Initial Losses calculation

We are persuaded by Vodafone's view [p. 15] that the Commission's work on financial losses is the one chance for the Commission to get it right and that it is deserving of significant attention in terms of the Commission's time and resources.

We reiterate that it is only those costs incurred "*... as a direct result of meeting specific requirements of the UFB initiative*" (s. 177(5)) that may be considered by the Commission. This requires the Commission to take a constrained interpretation of financial losses and this supports, we believe, Vodafone's suggestion that an incremental costs approach is necessary.

If you have any questions regarding the matters raised in this submission, please do not hesitate to contact me at this email address: [fiona.wiseman@trustpower.co.nz](mailto:fiona.wiseman@trustpower.co.nz)

Regards,

A handwritten signature in black ink that reads "Fiona Wiseman". The signature is written in a cursive, flowing style.

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