Submission on TRL discussion paper

12 February 2021

CHORUS

Introduction and summary

1. This is Chorus' submission on the Commerce Commission's consultation paper *Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001: Discussion paper*, dated 10 December 2020 (discussion paper).

2. The funding proposal makes it clear that a high level of regulatory oversight and intervention in the telecommunications sector will continue for the next five years. A 33% increase on current funding levels is substantial and encompasses notable increases in Commission activity in the sector, particularly in the competition and consumer areas. The Commission identifies three funding options for the period out to 2026, but we note that the level of fibre regulation funding is the same in all three, so the difference relates to the level of Commission activity on competition and consumer.

3. We generally support the Commission's plans for the next five years. We support the Commission's view that the sector is delivering good infrastructure outcomes today and the consumer area is where there is greatest room for improvement and should be a key focus point. We also agree the regulatory regime should continue to support innovation and product development – there will be ongoing need for new fibre products that anticipate future consumer demand and can accommodate new technology and applications.

4. However, the proposed cost increase is material and is coming at a time where the economic impacts of covid-19 are making telecommunications customers more cost-conscious. Our estimate is that Chorus' levies would increase by more than $1m per year – a cost that we have not built into our business planning.

5. In this context, we ask that that Commission consider applying the funding increase in stages over two years, where funding for the fibre and telecommunications levies would increase by half of what the Commission has proposed in FY22 and then increase to the full 'Bridging the Gap' amount in FY23. This staged increase would make the cost increase easier to manage for telco businesses and their customers. From a Chorus perspective, as a listed company our planning cycle takes place over a reasonable timescale and it is not straightforward to absorb large costs with limited notice, so a staged increase would be easier to manage.

6. Under the proposed levies, Chorus will be by far the biggest contributor to the Commission's telecommunications costs – funding approximately 45% of the total cost despite representing 21% of qualifying revenues. We acknowledge that most funding for fibre regulation applies to Chorus. However, we believe a portion of the fibre sub-levies should be allocated to broader telecommunications companies and consumers. The Commission is required to consider whether fibre regulatory decisions will promote workable competition outcomes in telecommunications markets for the long-term benefit of end-users, so it is appropriate that this is reflected in the levies.

7. Our other key comments and recommendations are:

   7.1 Chorus expects the Commission to invest some resources into improving its compliance activity, specifically making its compliance priorities clear and ensuring the time spent on particular investigations is proportionate to the value in question.

7.2 We expect the Commission to drive for and find efficiencies in its operation and for this to flow through to lower levy requirements over time. We understand the Commission is investing in central business activities such as data management and engagement to better support the full range of the Commission's activities. This should deliver efficiencies over time as topic-area teams can access support from central resources. It was not clear from the paper when such efficiency benefits could be realised.

7.3 Some of the Commission's actions in relation to copper services appear unnecessary now) and should decline over time as copper services are deregulated. This is an area where the Commission should consider whether it can reduce its activity.

8. Finally, this levy proposal funds a step-change in Commission activity as it finalises the fibre regulatory regime, deregulates copper and implements new consumer initiatives. We would expect these activities to be largely completed by 2026 and thus 2021-2026 should be the peak for the Commission's regulatory levies – we would look for lower levies from 2026 as new regulatory settings are in place and become BAU.

Answers to discussion paper questions

Purpose and operating context

Question 1: Do you have any feedback on the purpose and objectives of [the discussion paper]?

9. The purpose and objectives are appropriate – to gather feedback on Commission funding to 2026 and to inform a decision by Ministers on final levies from 1 July 2021.

10. However, as noted above, we would support staging the funding increase over two years, so the full increase comes into effect from FY23.

Question 2: Please provide feedback on whether you agree with the characterisation of the operating context of the Commission's work in relation to telecommunications and fibre networks

11. Chorus broadly agrees with the description of the Commission's operating context.

12. We agree that "Telecommunications now supports New Zealanders in all aspects of their lives and has arguably never been more important to their standard of living. The importance of the sector is expected to increase even further with the continued growth of machine-to-machine communications and the internet of things (IoT)."[1] We are assessing the implications of this for our business and customers already.

[1] Discussion paper, paragraph 55.

Overview of regulatory responsibilities and funding

Question 3: Do you agree with the proposal to amend the Levy Regulations to continue the fibre sub-levies?

13. Chorus is comfortable with continuing to have price-quality and information disclosure sub-levies to fund fibre regulation. However, the allocation of the fibre sub-levies should change.

14. We consider that the Commission's application of section 166(2)(b) should lead to a broader allocation of the fibre regulation sub-levies. As we have said in previous submissions, we consider that section 162 has primacy and we agree with the Commission's expert panel that the relevance of section 166(2)(b) is likely to be limited.[2] However, the Commission considers that neither section has primacy and it is required to make decisions to give effect to section 166(2)(b) outcomes in cases where that is relevant.[3] If the Commission maintains its view, parties operating in telecommunications markets should be included in the fibre sub-levies.

15. The Commission's role includes identifying relevant telecommunications markets that are affected by fibre regulation and the participants in those markets. Once that is done, and to the extent Commission activities under Part 6 are designed to address competitive issues in those markets, then participants in those markets should be contributing to the fibre sub-levies.

16. Most fibre regulation costs should still be allocated directly to the LFCs, but a portion should be allocated to the remainder of the telecommunications sector. Any allocation of this will require some judgement. One option is to create a separate fibre sub-levy, for work focused on consumers in broader telecommunications markets, and Commission staff could allocate their time/costs to the relevant levy category. Another option would be to allocate a fixed proportion of fibre costs, perhaps 5%-10% of fibre costs, to telecommunications markets participants.[4]

Priorities and workplans

Question 4: Do you agree with the medium-term priorities for telecommunications and the Commission's focus on 'bridging the gap'? Are there other priorities that should be included?

Questions 5 & 7: Does the additional funding target the right areas of focus for the Commission's work in relation to telecommunications / fibre networks?

17. Chorus largely agrees with the Commission's proposed priorities and workplan items.

18. We support the Commission's view that the sector is delivering good infrastructure outcomes today, in particular through Chorus' world class fibre network. The fibre

[2] Chorus, *Submission on Fibre input methodologies: Draft decision*, 28 January 2020, page 23.
[3] Commerce Commission, *Fibre input methodologies: Main final decisions – reasons paper*, 13 October 2020, paragraphs 2.231.3 and 2.239.
[4] We thought about this in the following way: noting the Commission has to assess the four limbs of the Purpose Statement and also section 166(2)(b), arguably as a 'fifth limb', that could imply that 20% of the costs should be allocated to the general telecommunications levy. However, this would likely be an over-allocation, as section 166(2)(b) is not of relevance to every decision made under Part 6. An allocation of 5%-10% would more reasonably reflect the level of focus applied to section 166(2)(b) in the Commission's decisions.

regulatory regime is being put in place as a transition from the current contractual model, not to address any problems with infrastructure investment or pricing. Other regulatory goals in the infrastructure area are relatively modest incremental improvements – in short, there is not very much of a 'gap to bridge' for the Commission's telco infrastructure activities.

19. We agree the consumer area is where there is most opportunity for improvement and retail service quality should be a key focus for the Commission as it implements its new consumer powers from the Telecommunications Amendment Act 2018.

20. In paragraph 80 the Commission suggests that it could do more to incentivise LFCs to bring new products and services to market. Chorus operates in a market with continual evolution of technology and recognised competition in the supply of services from alternative technologies such as fixed-wireless access. This drives natural commercial incentives to innovate that have been in existence since well before Part 6 was developed and will continue for the foreseeable future. So Chorus has and will continue to put significant effort into encouraging fibre uptake, developing new products and making customer experience improvements, in order to drive improved customer outcomes and revenues over time.

21. The regulatory regime should support such innovation and product development and recognise the value of fibre services – customer demand for increased bandwidth will grow very fast and fibre is the best product to meet these needs. There will be continued need for fibre products that anticipate future consumer demand and can accommodate new technology and applications; we are pleased the Commission is focused on supporting this.

22. Finally, as the Commission is aware, Chorus' view is that there was a clear policy objective to deregulate copper services through the Telecommunications Amendment Act 2018. Some of the Commission's actions in relation to copper services appear unnecessary now and deregulation means that copper regulation will become less relevant over time. This is an area where the Commission should consider whether there are opportunities to reduce its activities when there are higher priority demands elsewhere.

Costings for fibre and telecommunications

Questions 6 & 8: Is the additional funding the Commission is seeking for telecommunications / fibre work appropriate? If a different level of funding is warranted, why?

23. The Commission is proposing a very substantial increase in its level of telecommunications resourcing – 33% in total, comprising a 21% increase in fibre revenues and a 48% increase in revenue from the general telecommunications levy. Our estimate is that Chorus' levies would increase by more than $1m per year – a cost that we had not built into our business planning. We broadly support the Commission's planned activities, but proposed cost increase is material and is coming at a time where the economic impacts of Covid-19 are making telecommunications customers more cost-conscious.

24. To smooth the impact, we ask that the Commission consider staging its funding increase over two years; i.e. funding for the fibre and telecommunications levies would increase by half of what the Commission has proposed in FY22 and then

increase to the full 'Bridging the Gap' amount in FY23. This staged increase would make the cost increase easier to manage for telecommunications businesses and their customers.

25. From a Chorus perspective, as a listed company our planning cycle takes place over a reasonable timescale and it is not straightforward to absorb large costs with limited notice, so a staged increase would be easier to manage.

26. This levy appropriation is to set the Commission's funding to 2026. By 2026 the Part 6 regime should be well established, with the second regulatory period beginning in 2025. Copper deregulation and decommissioning should be well progressed and the Commission will have set up process and systems relating for its new consumer objectives. Also the Commission's new core support services should be established, creating scope for efficiencies. We would not expect to see levies increase once this work has been completed. The next input methodologies review is likely to take place over 2026-2027, but this is a time-limited task and updates of IMs should carry a lower cost than the initial determination. Our expectation is that the 2021-2026 levy round will be the peak of regulatory levies for telecommunications and, absent any unexpected events, levies/Commission telecommunications revenues would then reduce, at least in real terms.

Capability and impact

Question 9: Provide feedback on whether the funding sought by the Commission will strengthen its capability and impact leading to the right mix of consumer outcomes.

27. We have no grounds to propose an alternative to the Commission's assessment of its needed resources for years to 2026. However, we expect the Commission to drive for and find efficiencies in its operation; it is slightly concerning that the consultation paper makes no mention of improving efficiency within the Commission itself.

28. We note the statement in paragraph 31 of the discussion paper that, because of the growth in the size of the Commission in recent years, "Each area of regulatory responsibility must contribute its fair share of the step-change in costs associated with the transition from a small to a medium-sized organisation". Our understanding is that the Commission is increasing the scale of its central business activities such as data management and engagement to better support the full range of the Commission's activities. We would expect this would mean, at least over time, lower costs in the topic-specific teams at the Commission (such as Telecommunications) as those teams become able to access shared expertise from the centre, but it is not clear from the paper when these efficiency benefits would be realised.

29. As a specific point, we believe there is scope for the Commission to improve the focus of its compliance activity, including making its compliance priorities clear, publishing a compliance framework and ensuring the time spent on each investigation is proportionate to the value or potential competitive distortions in question.

Question 10: Are there other outcomes you would expect to see with the additional funding sought?

30. None. The proposed list of workstreams and activities is comprehensive.

Other options considered

Question 11: Provide feedback on whether you think one of the other funding options is more appropriate and why

31. The Commission identifies three funding options for the period out to 2026. We note that the level of fibre regulation funding is the same in all three, so the difference relates to the level of Commission activity in the consumer and competition areas.

32. Subject to our recommendation above to stage the funding increase over two years, we tend to agree with the Commission that the 'Bridging the Gap' option is more suitable than the 'Holding the Line' or 'Bridging the Gap+' alternatives.