Better together.

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14/10/2021

Tristan Gilbertson
Telecommunications Commissioner
Commerce Commission
Level 9, 44 The Terrace
Wellington

Submitted by uploading to the Commerce Commission website

Dear Tristan,

TRUSTPOWER SUBMISSION: ADDITIONAL INFORMATION PUBLISHED RELATING TO INCENTIVE PAYMENTS

1. Introduction

1.1. Trustpower Limited (**Trustpower**) welcomes the opportunity to make a submission to the Commerce Commission (the **Commission**) on its open letter, *Seeking stakeholder views on additional information published relating to incentive payments*, of 30 September 2021 (the **Open Letter**).

1.2. The Commission is seeking the views of stakeholders on additional information relating to Chorus' expenditure allowance for incentive payments during Chorus' first price quality path (PQP1).

1.3. This submission develops Trustpower's position highlighted in our previous submissions, which is that these incentive payments have enabled us to offer more compelling retail propositions to our customers and compete with larger retail service providers (**RSP**s). [1]

1.4. Our present submission highlights:

- The Commission's final decision regarding PQP1 should enable Chorus to continue offering incentive payments;
- Incentive payments do not influence the geographic locations that we target within Chorus' network footprint; and
- Incentive payments are unlikely to be the same as monthly rebates.

1.5. We address each of these points in turn.

2. Enable Chorus to continue offering incentive payments

2.1. In its PQP1 draft decision, the Commission indicated that it would exclude incentive payments from Chorus' base capex and baseline connection capex allowances. The Commission then suggests that Chorus could make an individual capex application for any proposed incentive capex during PQP1.

[1] Trustpower submission: Consultation on Chorus' proposed expenditure for PQP1, 12 March 2021; and Trustpower submission: Consultation on Chorus' price-quality path from 1 January- draft decision, 8 July 2021.

2.2. Our concern with the Commission's proposed treatment of incentive payments is that it does not reflect the competitive rivalry at play in the market and introduces a risk that may reduce the level of competition between the smaller RSPs that rely on Chorus' fibre network and the larger RSPs that own mobile networks.

2.3. In particular, the Commission's suggestion that Chorus makes individual capex applications during PQP1 seems to amount to *ex-ante* regulation of each incentive payment offer. If that is the case, then it could introduce a process requiring the Commission to approve each incentive payment offer prior to its introduction. The delays associated with this approach would not be appropriate given the dynamic competitive nature of this market. Trustpower believes the suggested approach would give the larger RSPs an unfair competitive advantage.

2.4. Chorus' submission shows that it offers a range of incentive payment plans to RSPs.[2] Of these offers, *Mix it Up* is Chorus' key offer to us, and we also receive the *Intact ONT Incentive* offer.[3]

2.5. A number of terms of the Mix it Up offer have been amended since it was introduced in April 2019.[4] These amendments have improved the effectiveness of the offer and enabled us to be more competitive against the larger RSPs.

2.6. Going forward, we anticipate that the terms of Mix it Up would continue to evolve as customers' expectations regarding service quality develop and new services are introduced. It is important, therefore, that Chorus is responsive to changing market conditions so that it and the smaller RSPs can remain competitive.

2.7. However, requiring an individual capex application for any proposed incentive capex during PQP1 risks slowing the process of adapting offers like Mix it Up to new market conditions or introducing new incentive payment offers. This would potentially have a detrimental effect on RSPs ability to compete.

2.8. Trustpower, therefore, proposes that the process for setting the expenditure allowance for PQP1 is kept separate from the process of ensuring that incentive payment offers comply with Chorus' non-discrimination and geographically consistent pricing obligations.

3. Incentive payments do not influence locations we target

3.1. The Commission requests stakeholders' views on whether the information provided by Chorus on incentive payments raises any compliance issues with respect to the geographically consistent pricing requirement under s 201 of the Telecommunications Act 2001 (the **Act**). Section 201 requires Chorus to set prices that are geographically consistent:

> *201 Geographically consistent pricing*
>
> *A regulated fibre service provider who is subject to price-quality regulation must, regardless of the geographic location of the access seeker or end-user, charge the same price for providing fibre fixed line access services that are, in all material respects, the same.*

3.2. The Commission notes in its guidelines *Geographically consistent pricing: guidance on our intended approach to s201 of the Telecommunications Act 2001*, 30 September 2021 (the **Guidelines**) that "… *incentive payments may form part of the price charged for a service for*

[2] Chorus' submission *Chorus' customer incentive expenditure*, 10 September 2021, paragraph 16.

[3] Chorus also notes in paragraph 17 of its submission that Mix it Up is its key incentive payment offer to the market generally.

[4] Chorus lists the changes to the terms of the Mix it Up offer in paragraph 19 of its submission.

the purpose of s 201 …".[5]

3.3. As incentive payments may form part of the price charged for a service, we note that Chorus offers us the same incentive payments for providing fibre access services regardless of geographic location within its network footprint. In other words, incentive payments do not influence the geographic locations that we target within Chorus' network footprint.

4. Incentive payments are unlikely to be the same as monthly rebates

4.1. In relation to how incentive payments may form part of the price charged for a service, we note that the Guidelines state:[6]

> *There may also be no material distinction between a rebate on the price paid by an access seeker and an incentive payment. For example, a $10 monthly rebate on the price paid by an access seeker for the first year of a new connection, and a one-off incentive payment of $120 for signing up that new connection would likely have a materially equivalent effect on Chorus' revenue and the price paid by the access seeker.*

4.2. We disagree with this statement. Using the above example, a $10 monthly rebate on the price paid by an access seeker for the first year of a new connection is unlikely to be materially equivalent to a payment of $120 for signing up a new connection.

4.3. The reason that the above statement is unlikely to be true is that it does not take into consideration the effect that these two different approaches of pricing a service might have on consumers' decisions in the downstream retail market. That is, a consumer's decision to acquire a new connection may differ depending on whether a rebate on a monthly charge or an upfront payment is offered.

4.4. Whether a rebate or upfront payment is more effective in the retail market can only be determined through a process of testing different offers in the market. Our experience is that upfront incentive payments outperform monthly price discounts or rebates as joining incentives.

For any questions regarding this submission, please contact me on [redacted]

Regards,

Antony Srzich PhD.

Advisor, Strategy & Regulation

[5] Geographically consistent pricing, Guidance on our intended approach to s 201 of the Telecommunications Act 2001, 30 September 2021, paragraph 48.

[6] Ibid. footnote 24