Cross-submission: Fibre de-regulation review reasonable grounds assessment draft decision

Cross-submission | Commerce Commission

15 October 2024

Contents

Executive Summary

Thank you for the opportunity to provide feedback on the Commission's reasonable grounds assessment draft decision (**the draft**).

Chorus and LFCs have proposed an alternative basis for determining whether reasonable grounds exist for conducting a regulatory review. Their view is that an economic analysis should be performed to determine whether there appears to be any constraint on pricing and - if any evidence of a pricing constraint exists - then a reasonable basis exists for taking the next step of a deregulation review.

We disagree with their proposed approach and the evidence they propose to use. Spark is of the view that the alternative basis proposed by Chorus - and Tuatahi Fibre in particular - requires more work than necessary to form a view on whether reasonable grounds exist and sets too low a bar/threshold for moving to a full deregulatory review.

We consider that it is open to the Commission to take the approach it has proposed in the draft, and we support the Commission's findings that no reasonable grounds currently exist to conclude that a deregulatory review should be conducted.

The Commission has discretion to determine what constitutes reasonable grounds and – given the breadth of sections162 and 210 of the Telecommunications Act 2001 (**Act**) – is required to apply its expert judgement to that matter. In doing so it will focus on the specific powers granted to it under Part 6 of the Act to conduct this "reasonable grounds" review, it will place appropriate weight on relevant and irrelevant considerations, and it will act reasonably and proportionately. We have reviewed the Chorus, the LFCs and Frontier submissions and consider that a number of their key points warrant little weight being applied to them as they may be irrelevant, incorrect, or require the Commission to take unreasonable or disproportionate action.

Chorus and LFCs submit that wireless competition constrains fibre pricing, and that Chorus is unable to increase prices to a level whereby it can recover MAR permitted revenues. We disagree:

- There is no evidence to support the submission that competition to 1 or more fibre fixed line access services has increased or decreased in a relevant market. FWA growth is more likely evidence of FWAs substitutability for copper services during the copper migration process than evidence of its competitive constraint on fibre. During the same period fibre connections have grown far more rapidly than FWA and it is clear that both have benefitted from copper migration.

  Chorus submits that fixed to mobile voice substitution provides a reasonable basis for conducting a deregulatory review in respect of FFLAS voice services. Fixed-mobile substitution has taken place over a long period of time and was already well progressed for many consumers before Parliament legislated for the regulation of FFLAs. Fixed voice services do not stand alone in the regulatory framework, and we consider that even an exercise to consider deregulation of fixed voice, at this stage, would have implications for the broader FFLAS regulatory framework which are unwarranted in the circumstances. In other words, the benefits of any potential deregulation of fixed voice are outweighed by the costs of undertaking the deregulatory review. In any event, we consider that the purpose of regulating fixed voice FFLAS remains as true today as ever for a specific group of customers, as outlined in our initial submission. Particular subgroups of customers with defining characteristics may face market and economic risks that only regulated obligations to supply can mitigate given the incentives on LFCs to maximise revenues. We therefore consider that it remains open to the Commission not to commence a deregulatory review of fibre voice ad doing so would not result in better outcomes for consumers or increase the competitiveness of the relevant markets.

- Further, it is not clear that any inability to achieve exactly the MAR set for Chorus is linked to pricing constraints. In our view, any inability to achieve that MAR over the short term more likely relates to differences between fibre pricing practices (forward-looking based on forecast outcomes and only permitted once per annum) and the BBM methodology whereby the MAR is updated on a backward-looking basis at the end of the period for differences between forecast and actual outcomes. Given the consequences for exceeding the MAR, regulated fibre providers likely price to achieve revenues between forecast and updated MAR and will appear to notionally under-recover. The gap is likely to close as the BBM methodology and forecasting matures.

Chorus and LFCs submissions highlight that taking a narrow perspective of regulatory period outcomes and FFLAS services is likely to give misleading outcomes. For example,

- Chorus submits that it is unable to price to achieve the second regulatory period MAR. However, this assumes a particular MAR for that period, and we expect the Commission to smooth revenues between periods to mitigate the impact of a significant increase in the risk-free rate for the next period on end user prices.

- Further, they submit that observing a competitive constraint for a subset of FFLAS does not indicate a competitive constraint where planned prices are already high, or competition is at the margin and doesn't constrain Chorus and LFCs overall revenues. While we support the Commission's analysis based on the technical differences between technologies, further support for the draft can be seen in fibre providers pricing behaviours (always taking price increases as permitted), reported returns or investment and consumer preferences for fibre services.

Chorus and LFCs provide supporting information on a range of FFLAS transport and ancillary FFLAS services. On the face of it, these are fringe matters that are unlikely to be material for determining whether a deregulation is warranted and are not addressed in this submission. Nonetheless, we are happy to meet with Commission staff to provide further information on these services if helpful.

The submissions of Chorus and the LFCs are consistent with what we'd expect from regulated entities arguing for deregulation. They have thrown substantial resources at it but, in our view, they do not provide accurately categorised or sufficiently meaningful data or arguments to justify a departure from the draft. Any deregulatory review brings with it a broader set of risks of unintended consequences, significant incentives on regulated entities to invest in experts and resources to broaden the scope of deregulation and game the framework. There's every chance that the engagement by RSPs will be asymmetric, with retail providers needing to focus their attention and resources on competition among 90+ retail fibre providers, amidst a tight economic environment for consumers. In the circumstances, and given the novelty of the regulatory framework, we consider that reasonable grounds to conduct a deregulation review do not currently exist.

Introduction

1. Thank you for the opportunity to provide feedback on the Commission's reasonable grounds assessment draft decision (**the draft**).

2. Chorus and LFCs raise detailed issues in detail that we'd expect to see in a full deregulation review. In our view parties to a reasonable grounds process shouldn't need to engage expert advisors, nor has the short timeframes for this process allowed other interested parties to secure external experts.

3. The Commission has only just implemented the regulatory framework, and we already face calls from fibre providers for change. The Commission analysis highlights that there are material technical differences between FFLAS and other technology services that mean they are not strong enough economic substitutes, and there is nothing to suggest that alternative technologies are providing sufficient competitive constraints such that a deregulation review is warranted.

4. Chorus has argued that the Commission should determine now that a deregulation review is warranted, with a view to starting the review closer to the next regulatory period. However, while we agree the Commission will need to come back to this prior to the following regulatory period, we do not support the Commission determining the outcome of any future review ahead of time. While we operate in a dynamic market, the performance of those markets is substantially underpinned by the stability of the underlying FFLAS services, and it is uncertain what the impact of changing end-user preferences and emerging technologies will be at that time.

5. Further, if the Commission hopes to provide guidance on its approach to competition and deregulation, this should be through the separate guidance recommended by Vogelsang and Cave rather than a deregulation review.

6. Accordingly, we recommend that the Commission finalise its draft view that there are not reasonable grounds to take the next step of a deregulation review, and signal that it will consider the matter again prior to the third regulatory period.

The reasonable grounds framework

Chorus and LFCs proposed approach

7. Chorus and LFCs submit that the Commission has misinterpreted the s210 requirements for a reasonable grounds review.

8. Chorus submits that the Commission has incorrectly interpreted the s210 screening exercise and that:

    a. Rather than consider whether any subsequent review would be "likely" to conclude that FFLAS should no longer be regulated, the Commission should consider whether there is an objectively reasonable basis to proceed with that inquiry[1].

    Enable similarly note that the Act simply requires *reasonable grounds to start a review* not *reasonable grounds to deregulate*[2], and

[1] Chorus, para 29
[2] Enable at page 2

b. Rather than proceed with a review only where the likely outcome is deregulation[3], the Commission should consider whether there is a reasonable basis not to proceeding with a deregulation review.

9. Chorus further suggests that the Act requires the Commission to apply the Part 4 Commerce Act framework for regulatory inquiries[4], establishing a case to regulate Chorus and LFCs under Part 6 of the Act at every review[5]. If the Commission were to apply this approach, we consider that it would be acting beyond the scope of its powers under Part 6 of the Telecommunications Act 2001 and accordingly be acting unlawfully. While there may be similarities with Part 4 of the Commerce Act, Parliament created a different and specific regulatory regime for telecommunications which the Commission is limited to applying in this reasonable grounds assessment.

10. Tuatahi similarly argues that reasonable grounds would be established where:

    a. There has been a change in circumstances, and

    b. There is evidence that changing technologies had emerged which are *possible* substitutes for fibre. Tuatahi suggest that the emergence and growth of FWA, satellite and DMR technologies is a sufficient change in circumstances to trigger a review[6].

11. In our view the test cannot be that changing technologies have emerged that are possible substitutes for fibre. Even before the establishment of the regulatory framework for fibre there have been fixed line substitutes for copper and fibre, such as One NZ's HFC network, and wireless substitutes such as Spark's wireless broadband service, using FWA. These are not material new changes that provide the Commission with a compelling basis to review the regulatory framework. The Commission will recall that - to a large extent - it is Chorus that has driven the migration of customers from the copper network to alternatives wherever it has laid fibre. By removing copper lines, Chorus has forced consumers to assess their needs and what constitutes an appropriate replacement for their old copper broadband. As a consequence, it is inevitable that some consumers will churn to an FWA service simply because it is a reasonable substitute for their old copper lines, not because it is a strong substitute for fibre or FFLAS services.

12. The Commission's market monitoring report illustrates this migration. At the start of the current regulatory period:

    a. FWA share of connections was around 17% or ~300,000[7] wireless connections and 1.2 million fibre connections, and

    b. By the time of the latest Commission 2023 annual monitoring report this had increased to 19% or 378,000 wireless broadband connections and 1.35 million fibre connections.

13. While there has been FWA growth, the indications are that this has come predominantly from copper (which has seen a significant 120,000 connection decline) rather than from fibre growth.

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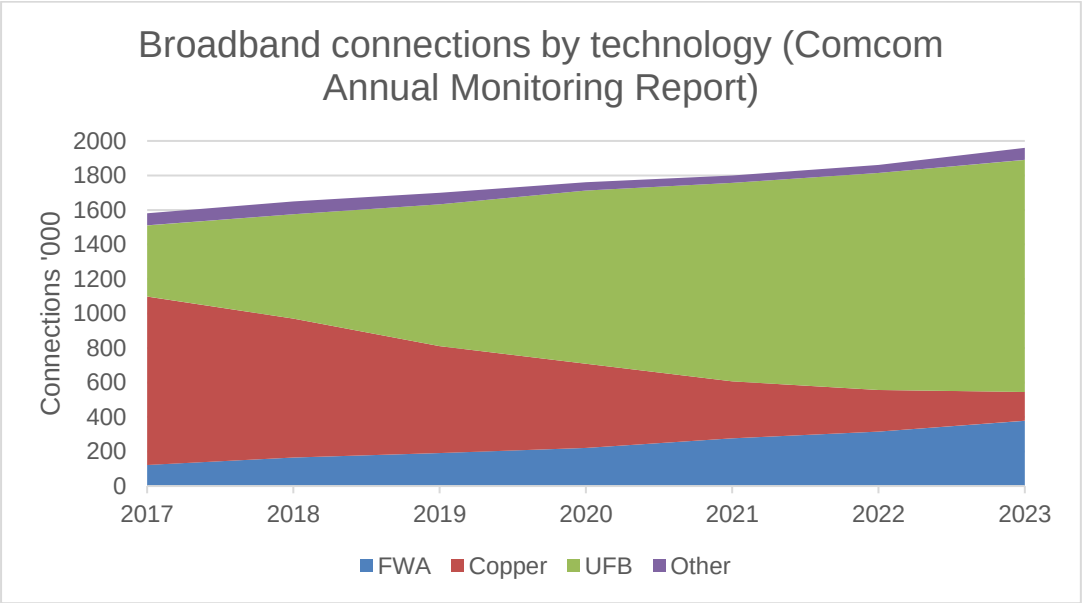
[3] Chorus, para 9, 32, 34
[4] Chorus, para 11
[5] Commission guidance https://comcom.govt.nz/regulated-industries/part-4/overview-of-part-4-inquiries
[6] Tuatahi at 1.5.3
[7] Average of end of year 2021 and 2022 report. https://comcom.govt.nz/__data/assets/pdf_file/0033/361959/2023-Telecommunications-Monitoring-Report-15-August-2024.pdf

Figure 1: shift in customers from copper to wireless services, and continued fibre growth



14. Overall, Chorus and LFCs' proposed approach would on the face of it see the Commission undertake a largely mechanical exercise to consider whether individual FFLAS services face a competitive constraint, and where that has occurred changes to the regulatory framework must follow. Under this model, the Commission wouldn't consider the nature of regulated fibre providers' market power and the regulatory framework within which the sector operates.

Comment

Lawfulness, Relevance, Reasonableness/ Rationality and Proportionality.

15. As a specialist, independent, regulatory decision-maker, the Commission has broad discretion when making a decision. The traditional principle is that a Court will not lightly interfere in the exercise of such discretion unless one or the other following conditions were satisfied, namely:

    a. The decision was contrary to law,

    b. Irrelevant factors were considered,

    c. Relevant factors were not considered, or

    d. The decision was one that no reasonable person could have taken (rationality).

16. The requirement that discretion must be exercised reasonably, requires that in must be exercised in a manner that is not so unreasonable as to be irrational, in other words, no reasonable person acting reasonably could have made it[8].

17. The principle of proportionality has also been brought into the jurisprudence of judicial review. Proportionality envisages that a public authority ought to maintain a sense of proportion between its particular goals and the means it employs to achieve those goals, so that its action impinges on the individual rights to the minimum extent to preserve public interest.[9]

[8] *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223), see also *Council for Civil Service Unions V Minister for the Civil Services* [1985], A.C. 74.
[9] Per Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Services*.

18. We don't support Chorus and LFCs proposed approach which in our view is subject to several concerns:

    a. Lawfulness - Chorus and Tuatahi's submissions seek to conflate the legal test under Part 6 for a reasonable grounds assessment with Part 4 of the Commerce Act. We consider that applying the Chorus approach - and going beyond the 4 corners of Part 6 - could be unlawful. We consider that, at the very least, it remains open to the Commission to apply the approach it proposed in the draft.

    b. Lawfulness and reasonableness – Part 6 establishes a 2-phase assessment before any changes are made to the regulatory settings. The first phase – a reasonable grounds assessment - is necessarily a more cursory assessment of higher-level considerations. Importantly the reasonable grounds assessment cannot require the Commission to engage and consider detailed economic evidence itself, or requires stakeholders with limited resources to invest accordingly. It does however have to consider specialist consultants reports provided to it during the consultation but can, in its discretion, determine the weight it applies to such reports. Nor can interested parties be required to engage teams of consultants to show that nothing has materially changed in the last 2 years. In our view that's self-evident. Parties like Spark, One NZ or 2degrees should not have to provide evidence of the performance of FWA services to displace a submission by regulated entities that they are not getting 100% of the copper migrations and therefore there are reasonable grounds to consider deregulating fibre. Requiring the Commission to go that far would make the reasonable grounds review meaningless as it would inevitably require the Commission to conduct something very similar to a full substantive review. Again, we consider that Chorus' proposed approach may be different to that envisaged in Part 6.

    c. Proportionality - Likewise, Tuatahi's proposed test based on whether there has been a change in circumstances and that possible substitutes have emerged would see the Commission and stakeholders incur the significant costs of a deregulation review without any plausible likelihood of it resulting in the deregulation of one or more FFLAS. Were the Commission to force stakeholders and interested parties to incur the costs of a full deregulatory review we consider that it would be a disproportionate action given the current market and regulatory context.

    d. Relevant and irrelevant considerations – We consider that the economic evidence of competition from FWA is at odds with the realities of broadband markets and fails to acknowledge the competitive dynamic between FWA and copper and the impact of the Chorus-driven copper migration process. Even if FWA does provide a limited competitive constraint on fibre there is nothing new to suggest that FFLAS are now subject to more meaningful competition from FWA than they were at the start of the regulatory period. The arguments raised by Frontier, Chorus and Tuatahi Fibre (that growth of FWA is evidence of a competitive constraint on fibre and therefore reasonable grounds for conducting a deregulation review) are potentially misleading may accordingly be irrelevant. As illustrated in paragraph 11 above growth of FWA and fibre occur as consumers migrate off copper. FWA has always been a reasonable substitute for certain copper services, that is not new. Significantly more consumers have continued to migrate from copper to fibre services than to FWA during the regulatory period. Again, that's not new. Submissions that FWA provides a new competitive constraint on fibre are simply not true and may therefore be regarded as irrelevant to the Commission's reasonable grounds assessment. Were the Commission to place weight on such submissions it may be problematic.

19. The Commission shouldn't undertake a deregulation review lightly. A deregulation review is a significant undertaking that would consume appreciable Commission and interested parties' resources and lead to a long period of uncertainty for consumers, retail service providers and investors.

20. Accordingly, the Commission should only head down the path of a deregulation review where warranted and – as set out above – the Commission has the discretion to determine what the threshold for undertaking a deregulation review should be. We support the Commission's draft approach whereby it would only head down this path where there is a reasonable likelihood that deregulating one or more FFLAS is likely to improve the outcomes from the regulatory system.

21. Further, the Commission's approach should recognise:

    a. The technical nature of fibre networks and technology alternatives, including important supply side characteristics of fibre optic telecommunications networks and FFLAS services.

    b. The nature of the regulatory framework and objectives. The regulatory framework was established in the context of the national UFB initiate which anticipated local fibre companies that would provide services on a wholesale, open access basis. These local fibre companies received significant Crown funding and support to establish exclusive geographic franchises and expected to have market power that required price controls.

    c. The position Chorus and LFCs have as regulated UFB fibre providers and the nature of their market power. As the UFB wholesale fibre providers, Chorus and LFCs have an important place in the sector, operating the fibre networks that support several FFLAS. It's the nature of these networks and services from which market power is derived.

    d. The potential impact on the regulation of fibre service providers from competition for one or more FFLAS services. The regulatory framework works to regulate fibre providers incentives and ability to use market power to undermine the s162/166 outcomes, and

    e. Practical considerations relating to the maturity of the regulatory system, resourcing and impact on retailers and consumers of a review.

22. These are technical matters that require expert Commission judgement.

23. Overall, we support the Commission's draft approach as a reasonable and pragmatic approach of considering whether to take the next step of a deregulation review. It is within the Commission's statutory purview to consider and apply the broader considerations of the Act relating to whether the reasonable grounds review and any future deregulation review is likely to promote the s162 outcomes.

Competition assessment

Fibre providers pricing and permitted MAR revenues

24. Chorus further submits that a deregulation review is warranted on the basis that competition from alternative technologies has limited its ability to set prices to recover the MAR in the first regulatory period, and this is likely to continue in the second regulatory period[10]. Chorus

[10] Chorus, 12, 13 and 52

suggests that this is the single most relevant piece of information for the Commission's decision[11].

25. However, we believe the Commission should exercise care considering pricing and profitability over a single regulatory period. There can be other drivers for observed short term variances such as BBM processes and returns only be considered over time.

26. Further, we think that any issue with Chorus' ability to achieve the MAR should be addressed as part of other BBM processes and not as part of this reasonable grounds assessment and may be irrelevant to the reasonable grounds assessment. We consider that it is open to the Commission to limit the weight it places on Chorus' submissions on this topic.

Gap between forecast and end of period updated MAR

27. For example, Chorus and Frontier submit that Chorus' May 2024 information disclosure report[12] suggests an under-recovery of the MAR in the first regulatory period and that this is due to Chorus facing pricing constraints. However, on the face of it, the information disclosure report suggests that any shortfall more likely relates to the inter-play between fibre pricing practices (based on forecast outcomes and only permitted once per annum) and the BBM methodology whereby the MAR is updated at the end of the period for differences between forecast and actual outcomes than any competitive constraint from fibre services.

28. The disclosure report indicates that Chorus FFLAS revenues exceeded the forecast MAR by $2M (highlighted in red in Figure 1), but there is only a shortfall when compared to the end of period MAR updated for end of period differences between forecast and actual CPI and cost allocations.

29. These differences are likely expected as fibre providers set FFLAS prices at the start, and through, the regulatory based on forecast outcomes (recognising that Chorus is only permitted to increase prices once in any 12-month period), but the final MAR is only known at the end of the period after adjustments for the difference between forecast and actual outcomes. There are significant consequences for regulated providers exceeding the MAR and, therefore, we would expect to see prices and revenues fall somewhere between the forecast and updated MAR. However, this effect relates to the interface between pricing practices and BBM processes and on the face of it unrelated to competitive constraints.

[11] Chorus, 12 and 13
[12] Frontier referring to the Chorus May 2024 information disclosure pack https://assets.ctfassets.net/7urik9yedtqc/nzx-doc-419987/397de8ee74ccb92eb8b7283a7d29c554/Chorus_ID_pack_-_31_May_2024.pdf

Figure 2: Chorus May 2024 Information Disclosure pack

PQP1 MAR wash-up balance of $105.6m

Description	Wash-up $m (nominal)	Revenue $m (nominal)	Notes
Building blocks revenue Pass-through costs **Forecast total allowable revenue 2023**		732.9 14.5 **747.4**	For the purposes of the wash-up 2023 MAR was set on the basis of 2021 forecasts for pass through costs and CPI.
CPI on the price path for 2023	26.6		Forecast CPI of 2.17% updated with 5.73% actuals via in-period smoothing.
Cost allocators	18.9		Previously forecast cost inputs (e.g. totex, connections and data traffic) updated for actuals in the period.
Initial RAB true-up	9.2		MAR adjustment to reflect increased allocation of shared assets in the final RAB decision: $17m for CY22/CY23, with a further ~$10m in CY24.
Individual capex proposal for 2023	1.3		Commission approved individual capex proposal for customer incentives for 2023.
Crown financing benefit	0.1		Reflects lower Crown financing balance than forecast.
Pass through costs over-forecast	(0.2)		Actual pass-through costs of $14.7m versus forecast $14.9m.
Subtotal of 2023 wash-ups	55.9	**55.9**	
Updated total allowable revenue 2023		**803.3**	
Less 2023 FFLAS revenue received		**(749.3)**	
2023 wash-up balance 2022 wash-up balance: smoothed		54.0 51.6	The 2022 wash-up balance was adjusted as part of the in-period smoothing process.
TOTAL PQP1 wash-up carried forward		**105.6**	The wash-up balance is rolled forward each year using the post-tax WACC as the time-value of money to preserve NPV neutrality.

30. In any case, this is likely a transitional implementation issue relating to the BBM that will be resolved as:

    a. The regulatory framework and forecasting accuracy matures and the gap between forecast and final adjusted MAR narrows, and

    b. Fibre providers align processes to minimise these effects. For example, Chorus further reported a similar alignment issue relating to the end of the second regulatory period[13] which led to it deferring annual price increases until January 2025.

Recognising smoothing between periods

31. Further, the Commission should only consider the BBM outcomes over multiple regulatory periods as considering a single period in isolation is likely to be misleading.

32. For example, Chorus has further indicated that it does not expect to achieve the MAR over the second regulatory period[14]. However, this appears to assume that the Commission doesn't smooth permitted revenues between regulatory periods - in any case - to mitigate the impact of increases in the risk-free rate on end user prices[15]. The Commission recognised at the time it adopted the prevailing rate methodology for estimating the risk-free rate that the approach can lead to volatile results, and that there are various smoothing mechanisms available to it to manage price changes to consumers[16].

33. In practice, risk-free rates have increased significantly since 2021[17] and the Commission proposes to smooth revenues across periods by applying an alternative depreciation profile to

[13] Footnote 108 of the PQ where the Commission reports that the gap between forecast total FFLAS revenue and forecast allowable revenue in its calendar year 2024 price compliance statement prevented it from making its annual CPI-related price change to core FFLAS products on 1 October 2024.
[14] Chorus estimate that the unadjusted expected MAR would have implied price increases of 17%. https://comcom.govt.nz/__data/assets/pdf_file/0031/362686/Chorus-submission-on-revised-depreciation-proposal-10-October-2024.pdf
[15] The increased risk-free rate adds 19% to the MAR. Draft decision at page 5.
[16] Fibre IMs Reasons Paper 6.115.
[17] The methodology has led to volatile results with the risk-free rate having increased by ~4% since 2021 and - since the Chorus WACC decision in August 2024 - has fallen back by ~0.4% since then. Chorus July 2021 0.51%, Chorus Jul 2024 4.63%, EDB DPP and Transpower September 2024 4.26%

selected assets to mitigate the impact on end user prices. If risk-free rates fall back to historic averages in future periods, it would be equally open to the Commission to accelerate depreciation to smooth revenues for regulated providers.

34. At this stage, the Commission proposes to calculate the alternative depreciation profile for the second regulatory period based on maximising the prices and revenues consumers will accept. However, the Commission could equally determine that the depreciation profile be calculated from CPI based price increases and that this would better support the purposes of the Act (we believe this is likely to be the case). The options lead to a different recovery over time.

35. However, without looking at the workings of the BBM model and across multiple periods, it is impossible to determine whether: the proposed recovery across periods is in end user interests; regulated providers recover their costs; or prices are in practice constrained by competition from alternative services (or determined by the BBM implementation which appears to be the case here). Again, as noted above, to the degree to which there is an issue with setting prices within regulatory periods, this should be addressed as part of the BBM processes.

36. Chorus' proposed approach to the current and second regulatory period outcomes highlights the risk of a false positives from observations without the context of the regulatory model and incentives and within a narrow time period.

Deregulation of one or more FFLAS to better promoted regulated fibre service provider s162 outcomes

37. We have similar reservations relating to the chain of substitution arguments which appear to require the Commission to take a narrow perspective to Chorus FFLAS pricing, and fail to take into account the shared nature of the access network, flexibility Chorus has to set individual prices and overall ability to increase prices.

38. Focusing on individual services is also likely to result in errors as, for example, the appearance of competition may be the outcome of Chorus pricing decisions or BBM investment and cost allocation decisions, rather than reflecting consumer preferences, cost and Chorus incentives to optimise pricing across all FFLAS to maximise outcomes within the price cap. Regulated providers likely face competitive constraints for some services, but this does not constitute evidence of a meaningful competitive constraint on the regulated service provider. A provider may still have market power while facing competition for some services. Even monopolists face limits on their pricing and may choose not to serve some customers or lose customers to alternative providers.

39. In any case, we support the Commission's draft decision as being pragmatic and reasonable. There are technical differences between fibre and alternative technologies and these differences suggest that Chorus and LFCs are unlikely to be meaningfully constrained by competition.

40. Further, when we step back and consider wider factors, there is little to suggest that Chorus and LFCs face material competitive pricing constraints. For example,

    a. As the Commission notes in the draft,

        i. There are significant technical and quality differences between FFLAS and wireless services. Chorus stresses these differences in its end-user communications and Chorus reports significant demand for multi-gigabit, high quality data that can only be met by fibre technologies[18].

[18] Pages 31 to 33, https://assets.ctfassets.net/7urik9yedtqc/nzx-doc-425562/3efb98692c0ee5bba39a2bce4fb571fc/Investor_Presentation_-_FY24_results.pdf]

ii. Wireless networks face capacity constraints and higher incremental costs to add capacity that fibre networks. Wireless network providers are further required to manage service performance across fixed and mobile customers.

b. Commission proposals are consistent with Spark consumer research which indicates different fibre and wireless consumer groups, with discernible differences across the size of the household, connected devices and how customers use the service. These are – in turn - consistent with the TCF broadband consumer personas.

c. Chorus and LFCs Chorus and LFCs have in practice taken the maximum permitted price increases in each period. And while Chorus reports that economic headwinds slowed progress on new revenues[19], this has not impaired its ability to increase prices.

d. Chorus and LFCs appear to be making higher ROIs than the Commission estimated mid-point WACC[20], and

e. The Commission annual monitoring highlights continued migration from copper to FWA (and fibre), and the significant growth in fibre connections matching expanding UFB coverage.

Conclusion

41. In conclusion we consider that it remains open to the Commission to conclude, as it does in the draft, that there are not currently reasonable grounds to conduct a deregulatory review of one or more FFLAS.

42. In our view if the Commission was to place significant weight on several of the key submissions made by Chorus, LFCs and their economic consultants, it might find itself placing weight on irrelevant considerations and/or acting beyond the scope of its mandate. At the end of the day FWA growth during the copper switch-off and migration process has always taken place, it is not new, and it is not a sign that FWA exerts a meaningful competitive constraint on fibre. We think it that to conclude otherwise would be irrational. A better time to consider the strength of any competitive constraint that wireless places on fibre may be after all copper migration has come to an end.

[end]

[19] Page 11, https://assets.ctfassets.net/7urik9yedtqc/nzx-doc-425562/3efb98692c0ee5bba39a2bce4fb571fc/Investor_Presentation_-_FY24_results.pdf
[20] In 2022, ROIs of between 8.6% and 12.2% compared to a mid-point WACC of 5.5%