



September 1, 2021

Wendy MacLucas  
Principal Adviser  
Commerce Commission New Zealand  
Level 9, 44 The Terrace  
Wellington 6011

Dear Wendy,

At NOW we're committed to our position as an enthusiastic challenger in the telecommunications industry. We believe that the consumer deserves a market of choice, and access to the products and services that best fit their needs, at a fair price. NOW is one of the success stories of the current regulatory environment that has enabled the genesis and growth of organisations like us. We help drive the category forward through innovation, competitive pricing and the improved customer service levels that New Zealanders enjoy today.

NOW has participated in Chorus' 'Mix It Up' incentive programme since 2019. As a challenger RSP, this programme has been important for us to compete effectively in the retail broadband market where Mobile Network Operators (MNO) together have more than two thirds market share.

We are concerned that there is uncertainty regarding the continuation of Chorus' customer incentive programmes beyond 31 December 2021. We understand that in its draft price quality determination published in May, the Commission said it would require Chorus to navigate a further regulatory approval process before approving its incentive programme.

We are aware that Spark and Vodafone have raised concerns about Chorus' incentive programmes. As owners of competing network infrastructure, their motivations are clear and the Commission should be alert to that. Notwithstanding that Vodafone and Spark have access to these incentives, they are fundamentally conflicted. There are two areas that we request the Commission give consideration to in assessing the merits of taking this draft position forward;

1. Spark and Vodafone's wholesale input and retail margin aspirations.
2. The lack of wholesale regulation of competing network technologies.

### **Wholesale Input and Retail Margin Aspirations**

Spark and Vodafone have publicly stated their Fibre to Fixed Wireless substitution aspirations. This activity brings considerable gross margin upside to their businesses. Chorus' ability to incentivise all RSPs gives challenger RSP brands, who don't stand to realise the same commercial upside as MNOs, the ability to genuinely compete while offering a superior performing product. Simply put, it is not in the MNO's best interests for non-MNO RSPs to have access to these offers.



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### **Lack of wholesale regulation of competing network technologies**

The Mobile Network Operators' Fixed Wireless technology is unregulated at a wholesale level and is in direct competition to regulated fixed line Last Mile Access. NOW has been in wholesale commercial negotiations with MNOs seeking to access this technology. As it stands, we are struggling to build a viable business construct and proposition due to biased pricing structures. An example of this is Spark's current retail offer of an entry level Fixed Wireless proposition, at a price point that is less than the wholesale input cost of the regulated entry level alternative products available from Chorus.

From an RSP perspective, regulated LFCs, like Chorus, competing with non-regulated alternatives is a significant disadvantage. This will only become more pronounced with the widespread availability of 5G.

This new unprecedented generation of wholesale competition at a last mile access level stands to be great for the consumers and businesses of New Zealand – so long as LFCs like Chorus are allowed to effectively compete.

We trust the Commission will take on board our views and those of other non-MNO RSPs ahead of its final price quality decision in December.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Hamish White". The signature is stylized and fluid, with a long horizontal stroke extending to the right.

Hamish White  
CEO  
NOW New Zealand Limited