



Chorus individual capex proposal for customer incentives - draft decision

Submission | Commerce Commission

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Introduction

1. Thank you for the opportunity to provide feedback on the Commission draft Chorus customer incentives capex proposal decision (**the draft**).
2. Chorus' proposes to offer incentive payments consistent with those currently in the market and approved by the Commission for the 2022 year.

Commission Framework

3. We set out our concerns with the Commission's approach to Chorus incentive payments - considering the purpose of Part 6 of the Telecommunications Act 2001 (**Act**) framework for considering the promotion of competition - in our 2021 submissions¹. We think that the inclusion of incentive payments is inconsistent with Parliament's intention that the Commission should constrain a regional fibre monopoly from using that monopoly to undermine competition.
4. Chorus has incentives to undermine competition in adjacent and nascent competitive markets, and pricing practices will reflect Chorus interests rather than that of competition or end users. Bundling and pricing practices that are permitted in competitive markets, may cause concerns when applied by a monopoly fibre access provider. The Commission should be interested in the form of incentives Chorus offers into the market.
5. In short, we noted that the incentive payment structure undermines competition by applying solely to the point at which customers are most likely to adopt competitive alternatives and are not in consumer interests because they rely on customer inertia to increase prices over time. The hurdle rate at which the incentives are payable² also discriminates against service providers who support demand from consumers for lower speed broadband services. Importantly, the incentive scheme does not promote efficiency, investment in better products / services or improved quality in the fibre products. Rather it permits spending for the purpose of excluding competitive alternatives from the market.
6. We believe that the incentives are inconsistent with the promotion of competition, and with the Commission approach to Retail Service Quality where the Commission is looking for more transparency for consumers. The incentive scheme targets a specific subset of customers in a non-transparent way - undermining retail pricing transparency - and rewards retail providers for mis-selling higher performing broadband services to consumers who would otherwise prefer lower quality and priced broadband.
7. For example, []SPKCI
8. Accordingly, rather than endorsing the current incentive payment approach, the Commission should prefer lower ongoing wholesale prices for low specification fibre services. This best promotes end-user interests and competition.

¹ For example, in September 2021 https://comcom.govt.nz/_data/assets/pdf_file/0024/262239/Spark-Cross-submission-on-Fibre-PQ-draft-decisions-5-August-2021.pdf and https://comcom.govt.nz/_data/assets/pdf_file/0027/268137/SparkNZ-Submission-on-Fibre-incentive-payments-14-October-2021.pdf

² 85% of new connections must be on plans 300Mbps or higher for the incentives to be paid

Feedback

9. The Commission did not consult on Chorus's design proposal and has asked that parties not submit on the appropriateness of incentive payments within the PQ path³ - we have focused on the specific matters discussed in the draft.
10. Accordingly, the Commission should consider further:

Making approval of the proposal contingent on Chorus removing the incentive hurdle

11. The hurdle rate is a particular concern as it discriminates against service providers that provide a full range of broadband services- i.e., including lower speed fibre variants for some consumer demand – and encourages service providers not to transparently provide services and prices to consumers.
12. Chorus Mix it Up credits are paid for a new fibre connection at an address or to reconnect an address that has been “offnet” for more than 30 days⁴, provided that 85% or more of an RSP's fibre orders are for 300M variants and above. The “hurdle” threshold for accessing this credit has increased from 70% to 85% over time⁵. Retail service providers accordingly have an incentive with the hurdle to promote higher specification plans in the market, i.e., selling customers on to higher speed plans.
13. Chorus is the only wholesale fibre access provider a hurdle of this nature.
14. We believe it is important that there are a range of fibre plans and prices in the market to support consumers who demand lower speed services. However, the incentive payment hurdle works to discourage service providers from supporting lower specified fibre services in the market. For example, as noted above, [JSPKCI We note that the lower speed 50M service is not widely supported across retail service providers.
15. Retail service providers face different incentives to promote higher speed services based on their mix of demand. However, the fact that the purpose of the incentive hurdle is to drive retail service provider behaviour rather than improve fibre service quality or reflect end-user demand should be a concern:
 - a. Consumers are not best served by retailers' mis-selling consumer fibre variants to meet a Chorus particular hurdle, and
 - b. The approach means price and quality options are not transparent to end-users. At the same time as the Commission is promoting greater transparency for consumers through the RSQ workstream, it would be endorsing an incentive approach that encourages the reverse.
16. The hurdle may also undermine the claimed purpose of the incentive payments themselves. For example, as entry level customers' demand can be met using wireless or fibre technologies, the hurdle is as likely to have the opposite effect of encouraging service providers to promote

³ At 1.18 of the draft

⁴ The discount is closely targeted at a specific customer group and customers of other providers. In other words, it does not seek to reflect consumer service quality preferences.

⁵ Chorus proposes to continue with the 85% “hurdle” for the 2023 year <https://sp.chorus.co.nz/product-offer/mix-it-1-january-30-june-2023>

17. wireless broadband over fibre to customers as the entry level technology. In other words, service providers can meet the threshold by steering customers towards 300Mbps plans, or by promoting alternative technologies such as wireless for customers who demand lower speed services.
18. We find it difficult to identify a legitimate purpose for Chorus to apply the hurdle and, therefore, its purpose can only be to discriminate between service providers.

Ensuring the economic test captures all related costs

19. The Commission has also applied a financial test to the proposal whereby the incremental cost of the incentive must be less or equal to the stream of incremental cashflow generated by the scheme.
20. As set out earlier, we do not believe that the Commission test is sufficient on its own for determining whether a decision promotes competition or is in end user interests. Nonetheless, even if the Commission were to apply the test as proposed, the proposed approach does not appear to capture all the costs of the pricing strategy. The draft proposes to take account of the revenue resulting from incremental connections, and the incremental costs to provide lead-ins where required. However, the analysis does not consider the associated costs of Chorus' pro-active deployment of fibre lead-ins.
21. As at the time of our October 2021 submission⁶, Chorus had pro-actively deployed fibre lead-ins to premises for which there was no end user customer service order as part of a fibre ready initiative. This is a significant \$100M+ investment that targets customers either served by alternative providers or likely to be actively considering their broadband options. It is these pre-connected premises that, to a material extent, the incentive payments target.
22. We believe that the Commission should consider the proposal in the context of Chorus' overall commercial and pricing strategy, and this would include related spend on poorly utilised pre-provisioned premises⁷. If the Commission were to only consider the marginal effects of a proposal - and ignore associated investments or initiatives - then Chorus would only have limited incentives to efficiently provide FFLAS and few if any future proposals would ever be caught by the economic test (even when these should not otherwise be approved). The Commission should consider all related activities and costs when considered an expenditure proposal
23. Chorus continues to deploy around 10,000 fibre lead-ins per quarter ahead of any known demand and without a RSP customer service order⁸.

[End]

⁶ Discussed at para 45 https://comcom.govt.nz/_data/assets/pdf_file/0027/268137/SparkNZ-Submission-on-Fibre-incentive-payments-14-October-2021.pdf

⁷ At the time Chorus was reporting uptake of 50% of these pre-provisioned premises. Logically premises connected with a service order would have close to 100% uptake.

⁸ Reported at page 5 of PDF <https://company.chorus.co.nz/file-download/download/public/2412>